THE

# WHOLE LAW

RELATIVE TO THE

# DUTY AND OFFICE

OF A

# Justice of the Peace.

COMPRISING ALSO THE AUTHORITY OF

## PARISH OFFICERS.

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*BY THOMAS WALTER WILLIAMS, ESQ.*
OF THE INNER TEMPLE, BARRISTER AT LAW.

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## IDEOTS AND LUNATICS.

THE guilt of offending against any law whatsoever, necessarily supposing a wilful disobedience, can never be justly imputed to those who are either incapable of understanding it, or of conforming themselves to it. 1 *Hawk. c.* 1.

Hence ideots and lunatics, who are under a natural disability of distinguishing between good and evil, are not punishable by any criminal prosecution whatsoever. 1 *Hawk. c.* 1. *s.* 1.

An *ideot* is a fool or madman from his nativity, and one who never has any lucid intervals. *Co. Lit.* 247. a. 1 *Hale's Hist.* 29. Ideots.

Therefore a person that is born deaf and dumb is in presumption of law an ideot, and the rather because he hath no possibility to understand what is forbidden by law to be done, or under what penalties*. 1 *Hale's Hist.* 34.

*Lunacy* is a partial derangement of the intellectual faculties, Lunatics.

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*But if it can appear, that he hath the use of understanding, which many of that condition discover (hereon see vol. i. p. 757.) by signs to a very great measure, then he may be tried, and suffer judgment and execution, though great caution is to be used therein. 1 *Hale's Hist.* 34.

the senses returning at uncertain intervals; the offender is therefore only protected from punishment for acts done during the prevalence of his disorder. 1 *Hale's Hist.* 31. 4 *Black. Com.* 24.

Madness.

*Madness* is a total alienation of the mind and deprivation of memory. 1 *Hale's Hist.* 30.

All these defects, whether permanent or temporary, must be unequivocal and plain; not an idle frantic humour, or unaccountable mode of action, but an absolute dispossession of the free and natural agency of the human mind. 8 *St. Tri.* 322. 1 *Hale's Hist.* 30, 31, 32, 33.

Mad by drunkenness.

Hence therefore the artificial madness, which is produced by *drunkenness* and intoxication, does not intitle a man to the protection of the law.

For Sir *Ed. Coke* says, a drunkard, who is *voluntarius dæmon*, or a voluntary madman, hath no privilege thereby; but what hurt or ill soever he doth, his drunkenness doth aggravate it. *Co. Lit.* 247.

And he shall be punished for it, as much as if he had been sober. 1 *Hawk. c.* 1. *s.* 6.

How found such.

In presumption of law every person of the age of discretion is presumed of sane memory, unless the contrary be proved. 1 *Hale's Hist.* 33.

And this may appear either by the inspection of the court—by evidence given to the jury who are charged to try the indictment—or being a collateral issue, the fact may be pleaded and replied to *ore tenus*, and a *venire* awarded returnable *instanter* in the nature of an inquest of office; and this method, in cases of importance, doubt, or difficulty, the court will in prudence and discretion adopt. 1 *Hale* 34, 35. *Fost. Cr. L.* 46. 1 *Hawk.* 8*vo. ed.* 3. *n.* (5).

And if it be found that the party only feigns himself mad, and he still refuse to answer, he shall be dealt with as one that stands mute*. 1 *Hawk. c.* 1. *s.* 4.

But if one who has committed a capital offence become *non compos* before conviction, he shall not be arraigned; and if after conviction, he shall not be executed. 1 *Hawk. c.* 1. *s.* 3.

Persons insane charged with offences and acquitted to be secured.

And it is now expressly provided by 39 & 40 *Geo.* 3. *c.* 94, where it shall be given in evidence upon the trial of any person charged with treason, murder, or felony, that such person was insane at the time, and such person shall be acquitted, the jury shall find specially; and if they find that such person was insane at the time of the offence, the court shall order such person to be kept in strict custody, in such place and in such manner as to the

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* By 12 *Geo.* 3. *c.* 20, in felony and piracy (see the general title Mute) the judgment shall be the same on standing *mute* as if the prisoner had confessed the indictment or appeal.

court shall seem fit, until his majesty's pleasure shall be known. *s.* 1.

If any person indicted for any offence shall be insane, and shall upon arraignment be found so to be by a jury impannelled for that purpose, so that such person cannot be tried, or if upon the trial of any person so indicted such person shall a pear to the jury to be insane, the court may direct such finding to be recorded and thereupon order such person to be kept in strict custody until his majesty's pleasure shall be known. *s.* 2.

Persons insane indicted and arraigned, or discharged for want of prosecution be secured.

And if any person charged with an offence shall be brought before any court to be discharged for want of prosecution, and shall appear to be insane, such court may order a jury to be impannelled to try the sanity of such person; and if the jury find such person to be insane, such court may order such person to be kept in strict custody, until his majesty's pleasure shall be known. *Ibid.*

And in all cases of insanity so found, his majesty may give such order for the safe custody of such person so found to be insane in such places and in such manner as to his majesty shall seem fit. *s.* 2.

The king may order the custody of lunatics.

If any person be apprehended under circumstances that denote a derangement of mind, and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted, and any *justices of the peace*, before whom such person may be brought, shall think fit to issue a warrant for committing him as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed, except by two *justices of the peace*, one whereof shall be the justice who issued such warrant, or by the general quarter sessions, or by one of the judges of the courts at Westminster, or by the lord chancellor. *s.* 3.

Persons suspected to be insane about to commit crime may be secured

Although a person who wants discretion is not punishable by any criminal prosecution, yet if he commits a trespass against the person or possession of another, he shall be compelled in a civil action to give satisfaction for the damage. 1 *Hale's Hist.* 15, 16.

Lunatics answerable in a civil action.

And he who incites a madman to do a murder, or other crime, is a principal offender, and as much punishable as if he had done it himself. 1 *Hawk. c.* 1. *s.* 6.

Irritating a madman to acts of violence.

By 17 *Geo.* 2. *c.* 5, when persons by lunacy or otherwise are furiously mad, and dangerous to be permitted to go abroad, it shall be lawful for two or more justices where such lunatic is found, by warrant directed to the constables, churchwardens, and overseers, to cause such person to be apprehended, and kept safely locked up in some secure place, within the county or precinct, as such justices shall direct, and if such justices find it necessary, to be there chained, if the last legal settlement of such person be in any place within such county:

How lunatics may be restrained by justices of peace.

And if such settlement be not there, such person shall be sent

to the place of his last legal settlement by a pass, *mutatis mutandis*; and shall be locked up or chained by warrant of two justices of the county or precinct to which such person is to be sent:

And the charges of removing, and of maintaining and curing such person during such restraint (which shall be for such time only as such madness continues) shall be paid (being first proved upon oath) by order of two justices, directing the churchwardens or overseers, where any goods, lands, or tenements, of such person be, to seize and sell so much of the goods, or receive so much of the rents of the land as is necessary to pay the same, and to account for what is so seized, sold or received, to the next quarter sessions; but if such person hath not an estate to pay the same, over and above what is sufficient to maintain his or her family, then such charges shall be paid by the parish or place to which such person belongs, by order of two justices directed to the churchwardens or overseers. *s.* 20.

But this act shall not restrain or abridge the power of the king or lord chancellor, or the chancellor or vice chancellor of the county palatine of Lancaster, or the chamberlain or vice-chamberlain of the county palatine of Chester, concerning such lunatics, or restrain any friend or relation of such lunatics from taking them under their own care *. *s.* 21.

And any person aggrieved by any act of any justice out of sessions, may appeal to the next sessions, giving reasonable notice; whose order therein shall be final. *s.* 26.

The foregoing act relates only to vagrant lunatics who are strolling up and down the country, and does not extend to persons of rank and condition in the world, whose relations can take care of them properly by applying to the court of *Chancery*. 2 *Atk. Rep.* 52.

Lunatics endeavouring to gain admittance to his majesty.

And by 39 *and* 40 *Geo.* 3. *c.* 94, If any person who shall appear to be insane, shall endeavour to gain admittance to his majesty's presence, by intrusion on any of his palaces or places of residence, or otherwise, so that there may be reason to apprehend that his majesty's person may be endangered, the privy council or one of the secretaries of state, may order such person to be kept in safe custody; and the lord chancellor may award a commission under the great seal directed to commissioners to enquire into the sanity of such person, and whether the person of his majesty may be endangered by reason of the insanity; and for such purpose, may direct the sheriff of the county to summon a jury to try the same, in the same manner as on a commission in nature of a writ *de lunatico inquirendo*, and if

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* For it is said, that any one may confine a friend, who is mad, and bind and beat him in such a manner as is proper in such circumstances. 1 *Hawk.* *c.* 60. *s.* 23.

upon the inquisition taken it shall be found that such person is so far insane, the lord chancellor may take order for the safe custody of such person, so long as there shall be reason to apprehend that the person of his majesty may be endangered. *s.* 4.

And if it shall afterwards appear, that such person shall have recovered the use of his reason, so that there shall be no longer any reason to apprehend any danger to his majesty's person, the lord chancellor may enquire into the fact, by such means as to him shall seem proper, and if it appear that such person has recovered the use of his reason, he may direct such person to be discharged from custody either absolutely or conditionally, or under restrictions. *Ibid.*

No person to keep a house for the reception of lunatics, unless licensed

By 14 *Geo.* 3. *c.* 49, *made perpetual* by 26 *Geo.* 3. *c.* 91, If any person in *England*, *Wales*, or *Berwick upon Tweed*, shall conceal, harbour, entertain, or confine, in any house or place kept for the reception of lunatics, more than one lunatic at one time, without having such licence as is hereafter directed (except such as are committed by the court of *Chancery*), such person shall forfeit 500*l.* *s.* 1.

by the college of physicians, within 7 miles of London;

And such licences within *London* and *Westminster*, and within seven miles of the same and within *Middlesex*, shall be granted yearly, as in the said act is directed, by commissioners appointed by the college of physicians.

and by the quarter sessions elsewhere.

And no house which is not within *London*, or within seven miles of the same or within *Middlesex*, shall be kept for the reception of more than one lunatic, unless such house shall be licenced by the quarter sessions for the county wherein such house shall be situated. *s.* 22.

But no licence shall be granted either by the commissioners or justices unless the person to whom such licence is granted, shall enter into his recognizance to the king in 100*l.* with two sureties each in 50*l.* or one surety in 100*l.* for the good behaviour of such person. *s.* 28.

And the justices at any general quarter sessions are to grant licences to such persons as shall apply, such persons paying for each licence, *viz.* for each house wherein there shall be kept any lunatics, not exceeding ten, 10*l.* and above ten, 15*l.* and no one licence shall authorise any person to keep more houses than one, nor shall such licence be granted for longer than one year; and the said justices shall, at the time of granting such licences, appoint two justices, and also one physician, to inspect such houses; and the said justices and physicians appointed, or two of them, whereof the physician to be one, may visit in the day-time, every house licensed, as often as they shall think fit. *s.* 23.

And the said justices and physician may, at every visitation, if they think necessary, make minutes in writing of the condition of every house which they shall visit, as to the care of the pa-

tients, and such other particulars as deserve notice, with their observations thereupon; which minutes shall be entered in a register to be kept by the clerk of the peace, a copy whereof shall be sent by the said clerk of the peace, to the secretary to the commissioners of the college of physicians, to be by him inserted in a separate register: which register shall be kept in the same box, and in the same manner, as the register belonging to the said commissioners; and the said clerk of the peace shall be paid such sum for his trouble as the justices shall direct; and all money to be paid for such licences as shall be granted by the said justices, shall be paid to the clerk of the peace, who shall keep an account thereof in a book, and shall account for the same to the justices, as often as required; and all expences attending the execution of this act (except within *London* and *Westminster*, and seven miles thereof, and within *Middlesex*) shall be defrayed out of such money, in such manner as the justices shall direct. *s.* 24.

And at such general quarter session, when such justice and physician shall be appointed, the clerk of the peace shall take the like oath as is appointed to be taken by the secretary of the commissioners*. *s.* 25.

And in case the keeper of any such house shall, in the daytime, refuse the said justices and physician, on such visitation, admittance into such house, the keeper shall forfeit his licence. *s.* 26.

The keeper of any house not within *London* or *Westminster* or seven miles thereof, or within *Middlesex*, shall give such notice as aforesaid of the receipt of every lunatic (except sent there by parish officers) to the secretary to the commissioners at the college, within fourteen days †: and every keeper who shall ad-

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* The form of such oath is as follows:

*I, A B, do swear, that I will faithfully execute all such trusts as shall be committed to my charge, for executing an act of parliament made in the fourteenth year of the reign of King* George *the Third, entitled* An act for regulating madhouses; *and that I will keep secret all such matters as shall come to my knowledge, in the execution of my office (except when required to divulge the same by legal authority).*

So help me God.

† That is to say, he shall cause notice thereof to be given to the secretary, which shall contain the name of every person received as a lunatic into such house, the name and place of abode of the person by whose direction such lunatic was sent, and also the name and place of abode of the physician, surgeon, or apothecary, by whose advice such direction was given; all which notices shall be sent sealed up, directed *To the secretary to the commissioners for licensing houses for the reception of lunatics, to be left with the beadle of the college of physicians in* London; all which notices the beadle is to receive, and deliver to the secretary within two days, and the secretary is to file

mit or confine any lunatic, without an order in writing, under the hand and seal of some physician, surgeon, or apothecary, that such person is proper to be received into such house as a lunatic, or shall receive any lunatic having such order, and shall not give notice thereof to the secretary, shall forfeit 100*l*. *s.* 27.

And the lord chancellor, or the lord chief justice of the *King's Bench* or *Common Pleas*, may, by any written order directed to the commissioners of the college of physicians, or to the justices and physician appointed visitors, require the said commissioners, or three of them, or the said visitors, or two of them, to inspect any house licensed; and also to report to him or them touching such matters as shall in such orders be directed; and the said chancellor or chief justice of the *King's Bench*, or *Common Pleas*, may, by a like order, send for and inspect the register; and may summon and examine all persons concerned in the execution of this act, as often as necessary; and in case they shall not obey such orders within two days, and not shew sufficient cause to the contrary, they shall be guilty of a contempt of court. *s.* 29.

But nothing in this act shall extend to any public hospitals. *s.* 30.

And in all proceedings under writ of *habeas corpus*, and in all indictments, informations, and actions, for confining or ill-treating any subjects, in any of the said houses, the parties complained of shall justify their proceedings, according to the course of the common law. *s.* 31.

The penalties may be recovered by action of debt, by and in the name of the clerk of the peace for the county where the offence shall be committed; and such penalties shall be applied, one moiety to the informer, and the other moiety for defraying the expenses attending the execution of this act within such county. *s.* 32.

*Imprisonment.* *See* ARRESTS, COMMITMENT, GAOLS.

*Incendiaries.—See* FELONIES (*without clergy*). See ARSON.

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such notices, and enter the same in the register within two days. *s.* 21.

And if any person shall apply to one of the commissioners, to be informed whether any particular person has been confined in any of the licensed houses, and the commissioners shall permit such inquiry to be made, and sign an order directed to the secretary, he is to make search: and if it shall appear, that the person inquired after has been confined, the said secretary shall acquaint the persons with the names of the keeper, and of those by whose direction such person has been confined. *s.* 19.

# INCLOSURES.

No person to act as a commissioner under any future act of inclosure, until he shall have taken the oath herein mentioned,

BY 41 Geo. 3. sess. 2. c. 109, *In order to diminish the expence attending the passing of acts of inclosure by consolidating in one act certain provisions usually inserted in such acts, and for facilitating the mode of proving the several facts usually required on passing of such acts*, IT IS ENACTED, that no person shall be capable of acting as a commissioner in the execution of any of the powers to be given by any act for dividing, allotting, or inclosing any lands or grounds, except the power of signing and giving notice of the first meeting of the commissioner or commissioners for executing any such act, and of administering the oath or affirmation herein-after directed, until he shall have taken and subscribed the oath or affirmation following :

*I A. B. do swear* [*or*, being one of the people called *Quakers, do solemnly affirm*], *That I will faithfully, impartially and honestly, according to the best of my skill and ability, execute and perform the several trusts, powers, and authorities vested and reposed in me as a commissioner by virtue of an act "for consolidating in one act certain provisions usually inserted in acts of inclosure, and for facilitating the mode of proving the several facts usually required on passing such acts,"* according to equity and good conscience, and without favour or affection, prejudice or partiality, to any person or persons whomsoever,

So help me God.

Which oath or affirmation any one of the commissioners, where more than one shall be appointed by any such act, or *any one justice for the county* within which the said lands or grounds shall be situated, where only one commissioner shall be so appointed, shall administer the said oath or affirmation, so to be taken and subscribed by each commissioner, and also the appointment of every new commissioner, shall be annexed to and inrolled with the award of any commissioner or commissioners, and a copy of the inrolment thereof shall be admitted as legal evidence. *s.* 1.

Commissioners declining to act, to give notice of such intention to the other commissioners; and

And every person appointed a commissioner who shall refuse or decline to act, shall forthwith give notice in writing to the other commissioners of his intention to refuse or decline; but he shall not be capable of being a purchaser of any part of the lands, within any parish in which the grounds intended to be inclosed are situate, either in his own name or in that of any

person, until five years after the date and execution of the award to be made by such commissioners. *s.* 2.

none to purchase any lands within any parish in which the inclosures are to be made, for a limited time.

And the commissioners are, by examination of witnesses upon oath or affirmation and by other legal means, to enquire into the boundaries of parishes, manors, hamlets or districts, and if it appear that the boundaries of the same are not then sufficiently ascertained such commissioners shall ascertain the same, and after the said boundaries shall be so ascertained, the same are declared to be the boundaries of such parishes, manors, hamlets, or districts: but such commissioners (before they proceed to ascertain the boundaries shall give public notice by writing under their hands to be affixed on the most public doors of the churches of such parishes, and also by advertisement to be inserted in some newspaper to be named in such act, and also by writing to be delivered to or left at the last or usual places of the abode of the respective lords or stewards of the lords of the manors in which the grounds to be inclosed shall be situate, and of such adjoining manors, 10 days at least before the time of setting out such boundaries. *s.* 3.

Commissioners to inquire into the boundaries of parishes, and if not sufficiently ascertained, fix them, giving notice of their intention so to do.

And such commissioners shall, within one month after ascertaining the same, cause a description thereof in writing to be delivered to or left at the places of abode of one of the church-wardens or overseers of the respective parishes, and also of such respective lords or stewards. *Ibid.*

Commissioners to cause a description of boundaries to be delivered to parishes.

But if any person interested in the determination respecting the said boundaries, be dissatisfied, such person may appeal to the justices acting in and for the county, at any general quarter sessions to be holden within four calendar months next after the publication of the said boundaries, by delivering or leaving such description as aforesaid; the party making such appeal, giving eight days notice of such appeal and of the matter thereof in writing to the commissioners; and the decision of the justices shall be final and shall not be removed by *certiorari*, or other writ. *Ibid.*

Persons dissatisfied, may appeal.

A true survey, admeasurement, plan and valuation of all the lands to be divided, allotted and inclosed by such act, and also of all the messuages, cottages, orchards, gardens, homesteads, ancient inclosed lands and ground within any parish or manor, shall be made and reduced into writing by such commissioners, and the number of acres and decimal parts of an acre, in statute measure, contained in all the lands directed to be divided, allotted, and inclosed; and also in all the ancient inclosed lands, grounds, and homesteads, and of each proprietor's distinct property in the same, at the time of making such survey, shall be therein set forth; and the said survey, admeasurement, plan, and valuation, shall be kept by such commissioners; and the persons who shall make such survey, shall verify the same upon oath or affirmation, at any meeting of the commissioners; and the proprietors and their agents, and all persons interested therein, shall have liberty to peruse and in-

A survey, admeasurement and valuation of the lands to be inclosed, shall be made and kept by the commissioners.

spect such admeasurement and plan only, and to take copies thereof. *s.* 4.

Power of entry to make surveys.

For surveying, admeasuring, and valuing lands, and for other the purposes of such act, it shall be lawful for such commissioners, or the persons appointed by them to make such survey, together with assistants and servants, at any time, until such division shall be completed, to enter, view, examine, survey, and admeasure, all lands intended to be divided and allotted, and also the ancient inclosed lands, grounds, and homesteads, directed to be surveyed, and to do any act necessary for putting such act into execution; but any map or survey made at the time of passing such act, which shall be tendered to such commissioners, and which shall be, in their judgment, a true map or survey, may be used if the commissioners think fit, without any new map or survey. *s.* 5.

Claimants of rights in lands to deliver the particulars thereof in writing

All persons who shall have or claim any common or other right in any lands to be inclosed, shall deliver to such commissioners, at one of such meetings as the commissioners shall appoint, an account in writing, of their respective rights or claims, and therein describe the lands, and the messuages, lands, tenements, and hereditaments, in respect whereof they claim to be entitled, with the names of the persons then in the actual possession thereof, and the particular computed quantities of the same, and of what nature and extent such right is, and also in what rights, and for what estates and interests they claim, distinguishing the freehold from the copyhold or leasehold; or on non-compliance therewith, every of them shall, as far as respects any claim so neglected to be delivered, be totally barred from all right and title in such lands so to be divided; all which claims or accounts shall, until after the execution of the award, be open to the inspection and perusal of all parties interested, their respective agents or attorneys, who may take copies thereof; and if any person interested shall have any objection to offer to such account, the particulars of such objection shall be reduced into writing, and signed, and shall be delivered to the commissioners, at or before some other meeting, to be by them appointed for that purpose; and no such objection shall afterwards be received, unless for some legal disability or special cause to be allowed by the commissioners. *s.* 6.

Commissioners not to determine disputes touching title, but make the allotments.

Nothing herein shall authorize such commissioners to determine any dispute, touching the right or title to lands: but such commissioners shall set out the allotments unto the persons, who, at the time of division and inclosure, shall have the actual seisin or possession of the lands, in lieu whereof such allotment shall be made: also no suit, touching the title, shall delay the commissioners in the execution of the powers vested in them; but the division or inclosure shall be proceeded in. *s.* 7.

Commissioners before making

Such commissioners shall, in the first place, before they proceed to make any allotments, set out the public carriage roads

and highways, and divert, turn, and stop up, any of the roads, over any parts of the said lands as they shall judge necessary, so as such roads and highways shall be thirty feet wide at the least, and shall be set out in such directions as shall, upon the whole, appear most commodious to the public, and they are to ascertain the same by marks and bounds, and to prepare a map in which such intended roads shall be accurately laid down, and to cause the same to be deposited with the clerk of the commissioners, for the inspection of persons concerned; and as soon as may be after such carriage roads shall have been so set out, and such map deposited, they are to give notice in some newspaper to be named in such bill, and also by affixing the same upon the church door of the parish, of their having set out such roads, and deposited such map, and also of the general lines of such intended carriage roads, and to appoint in the same notice, a meeting to be held by the commissioners, not sooner than three weeks from the date of such notice, at which meeting it shall be lawful for any person injured or aggrieved by the setting out of such roads to attend; and if such person shall object to the setting out of the same, then such commissioners, together *with any justice of peace* acting for the division, not interested, who may attend such meeting, shall hear and determine such objection, and the objections of any other person, to any alteration that the commissioners, together with such justice, may in consequence propose to make, and shall order and finally direct how such carriage roads shall be set out, and either confirm the map, or make such alterations therein as the case may require: but in case such commissioners shall by such bill be empowered to stop up any old road, the same shall in no case be done without the concurrence and *order of two justices*, acting for such division, not interested in the repair of such roads, and which order shall be subject to an appeal to *the quarter sessions*, as if the same had been originally made by such justice. *s.* 8.

any allotments are to appoint public carriage roads.

Such carriage roads shall be fenced on both sides, by such of the owners, and within such time as such commissioners shall, by writing under their hands, direct; and it shall not be lawful for any person to set up any gate across any such carriage road, or to plant any trees in or near the hedges on the sides thereof, at a less distance from each other than fifty yards; and such commissioners shall, by writing under their hands, appoint one or more surveyors, with or without a salary, for the first forming such parts of the carriage roads as shall be newly made, and for putting into repair such part as shall have been previously made, which salary, and also the expence of forming and repairing such roads, over and above a proportion of the statute duty on the roads repaired, shall be raised in like manner as the charges of obtaining and passing such act, and carrying the same into execution, and shall be paid to such surveyors on or before the execution of the award; and in case the same shall

Carriage roads to be fenced by owners of lands on each side.

be thereby provided to be raised by sale of any part of the lands to be divided and inclosed, then such commissioners shall make a conditional rate upon the owners, in case the produce of such sale should prove insufficient; and such surveyors shall be subject to the control of *the justices for the county* in which such roads shall lie, and shall account to *such justices* in like manner for all monies by them received and expended, and for the repayment of any surplus which may remain in their hands to such persons as shall have been liable to contribute thereto, according to the proportion ascertained by such commissioners; and such *justices* shall have the like powers of levying such rate as may be by them thought necessary for the purposes aforesaid, according to the proportions previously ascertained by such commissioners, as if such surveyors had been appointed under the general highway act of 13 *Geo.* 3; and in case such surveyors shall neglect to complete and repair such roads within two years after such award, unless a further time, not exceeding one year, shall be allowed by such justices, and then within such further time, they shall forfeit 20*l.* and the inhabitants at large of the parish wherein such roads shall be situate, shall be in no wise charged towards forming or repairing the said roads, except such proportion of such statute duty as aforesaid, till such time as the same shall, by such justices in their special sessions, be declared to be fully formed and repaired, from which time, and for ever thereafter, the same shall be supported by such persons, and in like manner as the other public roads within such parish, are to be amended and kept. *s.* 9.

Commissioners to appoint private roads.

Such commissioners shall set out and appoint private roads, bridleways, footways, ditches, drains, watercourses, watering places, quarries, bridges, gates, stiles, mounds, fences, banks, bounds, and landmarks, in, over, upon, and through or by the sides of the allotments, giving such notice and subject to such examination as to any private roads or paths as are above required in the case of public roads; and the same shall be made, and at all times kept in repair, at the expence of the owners, in such proportions as the commissioners shall by their award direct. *s.* 10.

Grass and herbage on roads to belong to the owners of lands on each side.

After such public and private roads and ways shall have been set out, the grass and herbage shall belong to the proprietors of the lands which shall next adjoin on either side as far as the crown of the road; and all roads, ways, and paths, which shall not be set out, shall be stopped up and extinguished, and shall be divided, allotted, and inclosed.

No turnpike road to be altered without the consent of the trustees.

But nothing herein shall give such commissioners any power to divert or alter any turnpike road, unless the consent of the majority of the trustees, assembled at some public meeting, called for that purpose on ten days' notice, be first had. *s.* 11.

Commissioners to have regard to the situation of a house.

Such commissioners in making the allotments shall have regard as well to the situation of the houses or homesteads of the

proprietors, as to the quantity and quality of the lands, so far as may be consistent with the general convenience of the proprietors; and such commissioners in making the allotments shall have particular regard to the convenience of the owners of the smallest estates. *s.* 12.

The commissioners shall be empowered, on application of the parties interested at their first or second meeting for receiving claims, and on attentive view and full consideration of the premises, to award and direct any allotments to be laid together and ring-fenced, and to be stocked and depastured in common, and to make such order for the equitable enjoyment thereof, and for the participation of any produce to grow thereon, as such commissioners may think beneficial for the several parties interested. *s.* 13.

Commissioners may direct small allotments to be laid together and used in common by the proprietors.

The several shares of any lands allotted unto persons entitled to the same, shall be in full bar of, and satisfaction for, their several lands, grounds, rights of common, and all other rights, which they had in the said lands, immediately before the passing of any such act; and immediately after the making the said division, and the execution of the award of such commissioners, or at any other time as such commissioners shall, by writing under their hands, to be affixed on the principal door of the church, direct, all rights of common, and other rights intended to be extinguished, shall cease and be extinguished. *s.* 14.

Allotments to be in full of all rights.

Such commissioners shall allot any messuages, buildings, lands, tenements, hereditaments, new allotments, or old inclosures, in exchange for any other in the same parish or manors, or within any adjoining parish or place; so as all such exchanges be made with the consent of the owners (testified by writing under their hands); and so that all such exchanges be ascertained in the award of such commissioners; and so that all such exchanges of lands belonging to any church, chapel, or ecclesiastical benefice, shall also be made with the like consent, in writing, of the bishop of the diocese, and of the patron. *s.* 15.

Commissioners may with consent of owners allot lands in exchange.

It shall be lawful for such commissioners (upon the request in writing of joint tenants or coparceners, or tenants in common) to make partition of the messuages, cottages, tenements, lands, and allotments, and to allot the same accordingly, in severalty; and after the said allotments, the same shall be holden by the persons to whom the same shall be allotted, in severalty, subject to the same uses, as the undivided parts would have been in case such partition had not been made. *s.* 16.

And also allot in severalty to joint-tenants or tenants in common.

All persons to whom any allotment shall be made, shall accept their allotments within two calendar months next after the execution of the award; and in case any person shall neglect or refuse to accept of his allotment within the time, such person shall be totally excluded from receiving any estate or right in any part of the lands inclosed. *s.* 17.

Persons to accept allotments within a limited time.

But it shall be lawful for guardians, husbands, trustees, com-

Guardians and trustees may

act for incapacitated persons. mittees, or attornies, to accept any allotments for the use of persons incapacitated; and also persons entitled to any allotment as tenants for lives, shall be enabled to accept of such allotments; and the non-claim or non-acceptance of any such guardian, husband, trustee, committee, or attorney, shall not exclude or prejudice the right of persons being under any disability, or absent beyond the seas, who shall claim or accept such allotment within twelve calendar months next after such disability shall be removed, or of any person entitled as heir in remainder after the death of any person dying during such incapacity, who shall claim or accept the same within one year next after his title shall have accrued, or be known so to be. *s.* 18.

Before execution of the award allotments may be ditched.

After the allotments shall be set out, and before the execution of the award, it shall be lawful for any person to whom any allotment shall be made, with the consent of the commissioners, in writing under their hands, to ditch, fence off, and inclose their allotments, as the commissioners shall direct. *s.* 19.

Trees standing on lands allotted to be paid for, or owners may cut them.

The timber trees, and other trees, thorns, and bushes, standing upon any waste, or lands, to be allotted by such act, shall go along with the lands whereon they stand, the persons to whom the same shall be allotted paying to the owner such sums, and at such times and places, as the commissioners shall, by writing under their hands, direct; but if the parties shall neglect or refuse to make the same, then the parties who shall be entitled to receive such payments may enter and cut down, and carry away the said trees, thorns, or bushes, at seasonable times within one year after such neglect or default. *s.* 20.

Clause as to lands in settlement, where they are to be sold or exchanged, and the purchase monies amount to 200*l.*

Whenever any money is to be paid for the purchase or exchange of lands, or of any timber or wood growing thereon, and which sum ought to be laid out in the purchase of other lands to be settled to the same uses, it shall be lawful for such commissioners, out of such sum, to defray such proportion of the expence of passing such act, and of carrying the same into execution, as shall, if any, be charged upon any of the lands so sold or exchanged, or on which such timber or wood actually grew, and also the expence of any permanent improvement, such as building, subdividing, draining or planting, and the like, which shall in the judgment of such commissioners be proper to be made; and in case the surplus shall amount to 200*l.* then the same shall with all speed be invested in the purchase of lands, which shall be conveyed to the like uses; and in the mean time such money shall be paid into the bank, in the name and with the privity of the accountant-general of the court of Chancery, to be placed to his account *ex parte* the said commissioners, without a fee, to the intent that such money shall be applied, under the direction of the said court, to be signified by an order upon a petition preferred in a summary way, by the person entitled, either towards the redemption or purchase of land tax, or towards the discharge of any incumbrances affecting the lands

so purchased or exchanged, or on which such timber grew, or until the same shall, upon like application, in a summary way, be laid out by order of the court, in the purchase of other lands, to be settled to the like uses; and in the mean time, such money may, by order of the said court, be laid out in some of the public funds, or on government or real securities, and the dividends arising therefrom shall, by order of the said court, be paid to such person as would be entitled to the rents. *s.* 21.

Under 200*l.*

But if such money shall be less than 200*l.* and exceed 20*l.* then the same shall, at the option of the person entitled to the rents, to be signified in writing, be paid into the bank in the name of the accountant-general, and be placed to his account, in order to be applied in manner before directed; or otherwise to two trustees to be nominated by the person making such option, and approved of by the commissioners signified in writing under the hands of the nominating and the approving parties, in order that such principal money and the dividends thereon may be applied in manner before directed, without obtaining the direction of the court of Chancery. *s.* 22.

Less than 20*l.*

And where such money shall be less than 20*l.* then the same shall be applied to the use of the person entitled to the rents, in such manner as the commissioners shall think fit. *s.* 23.

Persons not accepting allotments or refusing to inclose.

If any person, to whom any allotment shall be made, shall neglect or refuse to accept, inclose, and fence his allotment, within such time as such commissioners, by writing as aforesaid, or by their award, shall order, it shall be lawful for such commissioners to cause such allotment to be inclosed and fenced, and to let the same to any person they may think proper, and to receive the rents, until the expences attending the inclosure and fencing are paid, or to charge such expences upon the proprietor of the allotment; and by such writing, or by their said award, to appoint to whom, and to what time, the same shall be paid, subject to the same mode, and with the like powers of recovery thereof, as may be provided respecting the other expences of passing such act. *s.* 24.

Within 7 years after fencing of allotments, fences may be erected on the outside of the ditches, and materials carried away by proprietors.

It shall be lawful for the proprietors of the allotments, at seasonable times, within seven years next after the fencing of any allotment, to set up posts and rails, or other dead fences, on the outside of the ditches bounding their allotments, not exceeding three feet from such ditches, for the preservation of their quickset hedges, and at seasonable times before the expiration of the term, to take away the materials of such outside fences when they shall think proper. *s.* 25.

No fences standing when any act is passed to be destroyed, till the execution of the award.

No fences or hedges which at the time of the passing of any act shall be standing upon the lands directed to be inclosed, shall be cut down or destroyed by the owners, until the execution of the award, without the consent of such commissioners in writing; and if any such fences or hedges shall be assigned by such commissioners for a boundary, or subdivision fence

for any of the allotments, all such fences and hedges shall be left uncut, and the person to whom such allotment shall belong shall make such compensation in money to the former owners, as such commissioners shall, by writing under their hands, order, subject to the same mode, and like powers of recovery thereof, as may in such act be provided respecting the other expences of passing such act. *s.* 26.

Boundaries of common fields or inclosed ground formed by any mound, fence, brook or rivulet, how to be maintained.

But no proprietors whose allotments shall lie next to any common fields or inclosed grounds shall be compelled to make any hedges, ditches or fences, next to such common fields or inclosed grounds; but the whole mound, fence, brook, or rivulet, or other sufficient fences which divide such common fields or inclosed ground shall remain a boundary for the purpose of such division, and shall be maintained and repaired by the proprietors, in the same manner as before this act, or in such other manner as such commissioners shall direct: and in case it shall happen that some of the proprietors shall have a greater proportion of fences to make and maintain, than in the judgment of such commissioners the allotments ought to be charged with, it shall be lawful for such commissioners to ascertain such sum to be paid to every such proprietor towards making such fences, by such other of the proprietors who may have a less proportion, according to the value and quantity of the lands allotted, and to grant such other relief out of the money raised for defraying the expences of carrying such act into execution, as they shall think reasonable, in order that the boundary fences may be brought as near as may be to a just proportion. s. 27.

Penalty on breaking fences.

In case any person shall wilfully and unlawfully break down, destroy, carry away, or damage any fence, stile, post, rail, gate, bridge, or tunnel, put up or placed under the authority and for the purposes of any such act, every person so offending, and being thereof *convicted before any justice of the peace* for the county, on confession or on proof of the offence, by oath of one witness, shall forfeit not exceeding 5*l.*; and every person shall be allowed to give evidence notwithstanding he may be a proprietor or occupier of lands within, or an inhabitant of such parish, and notwithstanding he may be the owner of any such fence, stile, post, rail, gate, bridge, or tunnel. *s.* 28.

Expences of passing inclosure acts.

If it shall be provided by such act, that the expences of obtaining and also the expences of carrying the same into execution, shall be paid in proportion by the proprietors of lands or grounds; in such case when any such person, except the person thereby exempted from payment of any such charges, shall refuse or neglect to pay his proportion, or shall refuse or neglect to pay the expence attending the inclosing and fencing of any such allotments, as upon the neglect or refusal of the proprietors shall be inclosed and fenced by such commissioners, at the days and times appointed, it shall be lawful for such commissioners, by warrant under their hands and seals, directed to any person whomsoever, to cause the said costs, charges, and expences, and sums of mo-

ney, to be levied by distress and sale of the goods of the person making default, the husband, guardian, trustee, committee, or attorney, wheresoever the same shall be found, rendering the overplus, on demand, to the owner; the charges of such warrant, distress and sale, being first deducted, together with the interest after the rate of 5*l. per cent. per annum*, to be computed on such share, from the time the same shall be directed to be paid; or otherwise it shall be lawful for such commissioners, or persons authorised by them, to enter upon the premises allotted, and to receive the rents and profits thereof, until thereby, or otherwise, the share, and the said costs and charges, and all interest on such share, and also all costs, charges, and expences, occasioned by such entry and perception of the rents and profits, shall be fully paid. *s.* 29.

In such case as last aforesaid, it shall be lawful for the husbands, guardians, trustees, committees, or attorneys, of any of the owners of such allotment or exchanged lands, and for any tenants in tail, or for life, or years determinable on lives, or on any other contingency interested (except the rector or vicar of such parish), to charge such allotments, or exchanged lands, with such sum as such commissioners shall, by their award, or writing under their hands, adjudge necessary to pay the said shares of the charges, and of charging the said lands, so that the same shall not exceed 5*l.* for every acre; and to grant, mortgage, surrender, lease, or demise, or otherwise subject the lands for any term of years; or in case any person in possession, charged with a share of the expences, or enabled by this act to charge such lands with the same, shall choose to advance such sum, then it shall be lawful for the commissioners by deed or writing under their hands and seals, attested by two witnesses, in like manner to grant, mortgage, surrender, lease, demise, or otherwise subject the said lands to such person, for any term of years, for the payment of such money so advanced by him, with interest, to commence on the termination of his right in the premises; so that every such grant, mortgage, surrender, lease, or demise, be made with a proviso to be void, when such sums thereby secured shall be fully paid; and also with a covenant to pay and keep down the interest, so that no persons afterwards entitled, shall be liable to pay any further arrear of interest than for six calendar months preceding. *s.* 30.

It shall be lawful for such commissioners, if they shall judge it right to deduct from the respective allotments to be made to feoffees, or trustees of charity lands, or schoollands, so much land as shall, in the judgment of such commissioners, be equal in value to their proportions of the said expences, and to allot the same to such persons who will undertake to pay, and shall pay, all such expences. *s.* 31.

In case it shall be provided by any act, that the expences attending the same shall be paid by sale of any part of the land

to be inclosed, the commissioners shall set out such part of the waste lands, as in their opinion will by sale raise a sum of money sufficient to pay all such charges; and the said commissioners shall sell such part for the best price that can be gotten for the same, by private contract, or by public auction, of which six weeks previous notice shall be given, in such manner as shall by such act be directed with respect to other notices; and the person so purchasing shall immediately pay into the hands of the commissoners, one tenth part of his purchase money, and pay the remainder within three calendar months next after, or at such other time as the commissioners shall appoint; and in default, the money deposited shall be forfeited and applied in carrying such act into execution; and the said allotment, for which the whole money shall not have been paid, or for which there shall be no bidding at such auction, shall be again put up to sale, and sold for the best price, or by private contract, for not less than the remaining nine tenths for which the same was before sold, or the amount of one bidding above the sum at which the same was put up in the former auction; and every allotment for which the full purchase shall be paid, shall immediately thereupon be discharged from all common and other right thereon, and be vested in fee simple in, and be inclosed, and thenceforth held in severalty by such purchaser, and shall be allotted accordingly; and the purchase money shall be applied in defraying such charges as may be in any such act directed to be paid by the sale of such land. *s.* 32.

Commissioners may summon witnesses.

It shall be lawful for the commissioners, by any writing under their hands, to summon any person to appear before them at any time and place appointed, and to cause a copy of such writing to be served on such person, or to be left at his place of abode; and every person so summoned, who shall not appear before the commissioners (without some reasonable excuse), or appearing, shall refuse to be sworn or examined (such person having been paid or tendered the reasonable charges of his attendance), and being thereof convicted before one justice, upon information thereof upon oath made before such justice, shall forfeit not exceeding 10*l.* nor less than 5*l.* as such justice shall think fit. *s.* 33.

But no witness shall be obliged to travel above eight miles from the boundary of the parish, manor, or district, by any such act intended to be inclosed. *s.* 34.

Award of commissioners how to be drawn up.

As soon as conveniently may be after the division of the said lands shall be finished, pursuant to the directions of this or any such act, the said commissioners shall draw up an award in writing, which shall express the quantity of acres, roods, and perches, in statute measure, contained in the said lands, and the quantity of each part thereof which shall be allotted, or exchanged, and the situations and descriptions of the same, and shall al-

so contain a description of the roads, ways, foot-paths, water-courses, foot-paths, water-courses, watering places, quarries, bridges, fences, and land marks, set out, and all such other rules, orders, agreements, regulations, directions, and determinations, as the commissioners shall think proper, which award shall be ingrossed or written on parchment, and shall be read and executed by the commissioners, in the presence of the proprietors who may attend at a special general meeting called for that purpose, of which ten days notice shall be given in some paper to be named in such act and circulating in the county, which execution of such award shall be proclaimed the next Sunday in the church of the parish in which such lands shall be: from the time of which proclamation only, and not before, such award shall be considered as complete; and shall, within twelve calendar months after the same shall be so signed and sealed, or so soon as conveniently may be, be inrolled in one of the courts of record at *Westminster*, or with the clerk of the peace for the county in which such lands shall be situated, to the end that recourse may be had thereto by any person interested therein; for the inspection and perusal whereof no more than 1*s.* shall be paid: and a copy of the said award, or any part therof, signed by the proper officer of the court, or by the clerk of the peace, or his deputy, shall be made and delivered to any person requesting the same, for which no more shall be paid than 2*d.* for every sheet of seventy-two words; and the said award, and each copy signed as aforesaid, shall be legal evidence: and the said award or instrument, and the allotments, partitions, regulations, agreements, exchanges, orders, directions, determinations, and all other matters therein contained, shall be conclusive, except where some provision to the contrary is herein or shall be by such act contained; and the said commissioners, if they think it necessary, shall draw, on parchment or vellum, maps of the lands, and which shall express the quantity of each allotment in acres, roods, and perches, together with the names of the proprietors; which maps shall be annexed to and inrolled with the said award, and shall be deemed part thereof. *s.* 35.

Accounts to be kept by commissioners.

Such commissioners shall enter in a book, a particular account of all money received from the proprietors or others during the inclosure; and also of all the disbursements made by virtue of such act; which book shall be kept at the office of their clerk, open at all seasonable times, till all the accounts are settled, for the inspection of any of the proprietors, without fee; and in case any such commissioners, or their clerk, shall neglect to provide and keep such book, or refuse the inspection thereof, and shall be convicted thereof, upon the oath of one witness not interested in the inclosure, before any justice of the county in which such lands shall be situate, or of such other county where such commissioner or clerk so offending shall be, such commis-

sioner or clerk shall forfeit not exceeding 10*l.* nor less than 5*l.* to be levied and applied as other penalties by this act. *s.* 36.

Monies raised to be deposited as directed by proprietors.

All monies raised under any act, shall, as often as the same shall amount to 50*l.* be deposited in the hands of some banker, or such person as shall be approved by a majority in value of the proprietors who may be present at the first meeting of such commissioners: and in the notice of which meeting shall be expressed the intention of then appointing such banker, or other person; and no such monies shall be issued without an order in writing under the hands of such commissioners, specifying the person to whom, and the service for which, the same are due; and the balance, if any, upon the final settlement of accounts, shall be repaid to the land owners in proportion to the sums paid by them. *s.* 37.

How ecclesiastical lands may be leased for 21 years.

It shall be lawful for the rector or vicar of any parish, by indenture, under his hand and seal, with the consent of the bishop of the diocese, and of the patron, to lease or demise any part of the allotment allotted to such rector or vicar, to any person, for not exceeding twenty-one years, to commence within twelve calendar months next after the executing the award, so that the rent shall be reserved to the rector or vicar for the time being by quarterly payments; and so that there be also reserved to such rector or vicar, the best rent that can reasonably be had, without taking any fine, or other consideration, for the granting such lease; and so that no such lessee be made dispunishable for waste, and so that there be inserted in such lease, power of re-entry on non-payment of the rent within a reasonable time; and so that a counterpart be duly executed by the lessee. *s.* 38.

Recovery and application of penalties.

All penalties imposed by this or any such act, or which shall be imposed by such commissioners under this or any such act, shall be levied and recovered before one justice for the county in which the lands to be inclosed shall be situate, and residing near such parish, and not interested in the matter in question; for which purpose it shall be lawful for such justice, upon complaint, to summon the party accused, and the witnesses on both sides; and upon the appearance or contempt of the party accused, to examine such witnesses upon oath, and upon such evidence to give judgment accordingly, and to condemn the party accused (proof of the accusation being made by one witness) in such penalties as the offenders shall have incurred, and to levy such penalties by distress and sale of the offender's goods, together with reasonable costs; all which penalties, the application whereof is not particularly directed by such act or this act, shall be paid to and for such uses, intents or purposes, as such commissioners, by any writing under their hands, or in their award, shall order. *s.* 39.

Saving of rights of lords of manors.

Nothing in such act shall prejudice the right of any lord or lady of any manor or lordship, of, in, or to the seig-

niories, rights, and royalties incident to such manor or lordship, but the same (other than the interest meant to be barred by such act) shall remain. *s.* 40.

Saving always to the king, and to all other persons, bodies politic and corporate, all such, estate, right, title, and interests (other than such as are hereby intended to be barred), as before the passing of such act. *s.* 41. Of the king and others.

It shall be lawful for *two justices* to take affidavits on oath or affirmation of the notices required for such bills having been given, of the consents of the parties interested therein, of the allegations contained in the preambles of such bills, and of the quantity of the land to be inclosed; and such affidavits shall be in the forms contained in the schedule annexed: and not liable to any stamp duties. *s.* 42. Two justices may take the affidavits in the schedule.

If any person shall, in any examination, affidavit, deposition, or affirmation, taken in pursuance of this act, before such justices, or such commissioners, knowingly swear or affirm any matter which shall be false, such person shall, on conviction thereof, be guilty of perjury, and suffer the pains and penalties of wilful and corrupt perjury. *s.* 43. Perjury clause.

But the powers, authorities, directions, and provisions in this act, shall be only so far binding in each case, as they shall not be otherwise provided in any act hereafter to be passed. *s.* 44. Powers of this act.

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## A SCHEDULE OF THE FORMS ANNEXED TO THE ACT.

### (A.)

Form of affidavit of notices.

A. B. *of* ——— *maketh oath and saith* [or, being one of the people called Quakers, *upon his solemn affirmation, saith*], *That he did see a copy of the notice hereunto annexed on the church door of the parish of* ——— *in the county of* ——— [or, *on the several church doors of the respective parishes of* —— *in the county of* —— *or in the several counties of* ——— *and* ———] *on the several Sundays herein after mentioned;* videlicet [specifying the days on which the notices were affixed].

*Signed* A. B.

*Sworn* [or, *solemnly affirmed*] *before us, two of his majesty's justices of the peace acting in and for the* ——— *and subscribed in our presence, by the above named* A. B. *this* ——— *day of* ——— *in the year* ——— *As witness our hands and seals.*

(B.)

## FORM of AFFIDAVIT of CONSENT.

A. B. *of* ———— *maketh oath and saith* [or, being one of the people called Quakers, *upon his or her solemn affirmation saith*], *That he (or she) believes himself* [or *herself*] *to be interested in the proposed inclosure of the* ——— ——— *in the* ——— ——— [here describe the place, whether the parish, hamlet, or place] *in the county of* ———— *by virtue of* [here set forth the interest of the deponent]; [or] *that he* [or *she*] *believes that* C D *of* ——— *for whom he or she is guardian* [et cetera, as the case may be], *is interested,* et cetera *and that he* [or *she*] *hath seen a copy of an act* [*intituled* " *an act* for consolidating in one act certain provisions usually inserted in acts of inclosures, and for facilitating the mode of proving the several facts usually required on the passing of such acts"], *and also a copy of the bill intended to be presented to parliament, and hath subscribed his* [or *her*] *name, or hath set his* [or *her*] *mark to the same respectively, and doth consent to the said bill being passed into a law.*

*Signed or marked* A. B.

*Sworn* [or, *solemnly affirmed*] *before us, two of his majesty's justices of the peace, acting in and for the* ——— *and subscribed in our presence, by the above-mentioned* A. B. *this* ——— *day of* ——— *in the year* ——— *As witness our hands and seals.*

*The same form may be applied,* mutatis mutandis *to the case of several persons whose interests are joint, or whose interests, though distinct, are of a similar nature.*

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(C.)

## FORM of AFFIDAVIT of ALLEGATIONS of the BILL.

A. B. *of* ——— *maketh oath and saith* [or being one of the people called Quakers, *upon his or her solemn affirmation, saith*], *That* [here set forth such of the several facts alledged in the preamble of the bill as are within the knowledge of the witness] : or *that he* [or *she*] *is informed and verily believes that* [here set forth such of the said facts as are within the belief of the witness].

*Signed* A. B.

*Sworn* [or *solemnly affirmed*] *before us, two of his majesty's justices of the peace, acting in and for the* ——— *and subscribed in our presence, by the above-named* A. B. *this* ——— *day of* ——— *in the year* ——— *As witness our hands and seals.*

(D.)

FORM of AFFIDAVIT of ADMEASUREMENT.

A. B. *of* ———————— *maketh oath and saith*, [or, being one of the people called Quakers, *upon his solemn affirmation saith*], *That he has surveyed and admeasured the several* ——— ——— *lands in the parish or hamlet of* ——— *in the county of* ——— or, *counties of* ———] *described in the bill intended to be presented to parliament, and signed by the deponent, by the name* [*or names*] *of* ——— *and that the quantity of such lands amounts to* ——— *and no more, according to such admeasurement, and the best of this deponent's judgment.*

A. B.

*Sworn* [or, *solemnly affirmed*] *before us, two of his majesty's justices of the peace, acting in and for the* ——— *and subscribed in our presence, by the above-named* A. B. *this* ——— *day of* ——— *in the year* ——— *As witness our hands and seals.*

*Inclosures, pulling down.* See FELONY (*within clergy,—Inclosures*), and TRESPASS.

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## INDEMNITY OF OFFICERS.

IF a public officer be authorized by act of parliament to seize certain goods, and there is no indemnity in that, or any other act, for what he may do in the due execution of his office, he must act at his own peril; and will be liable to an action for seizing the goods, if it ultimately turns out that they were not the subject matter of seizure, even though there was a probable cause for seizing them.—Thus in the case of *Warne* v. *Varley and others*, *Mic. Ter.* 36 *Geo.* 3, where an action of trespass was brought against the defendants, who were searchers of leather, under the stat. 2 *Jac.* 1. *c.* 22 *, it appeared, that the searchers, by the 32d section of that act, are authorized to seize any leather that they may find offered to sale, not tanned according to the act, and retain it until it be tried by triers, who, by the 33d and 34th sections, are to be appointed for trying the same after the seizure. In this case, the defendants, in their capacity of searchers of leather, and acting according to the best of their

How far public officers are indemnified in acting.

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* See MANUFACTURES, Head *Leather*.

judgment had seized a certain quantity of leather, which, they thought, had not, after the tanning thereof, been well and thoroughly dried. The triers appointed according to the act, determined that the leather had been well and thoroughly dried, and restored it to the plaintiff. For this seizure the plaintiff brought his action; and on the behalf of the defendant it was urged, that the persons appointed searchers, being compellable by the act, under a penalty, to take upon themselves the office, it is not reasonable that, when they act fairly, they should be made trespassers, and liable to an action, for a mistake in the judgment they are compelled to exercise. But to this it was answered, that the defendants stood in the same situation as custom-house and excise officers formerly did, who, till the acts passed for their protection, acted at their peril, and were answerable to the party injured, in an action for any wrong seizure they might make, though there was a palpable ground of seizure.—The Court were of this opinion, but would have been glad to have found some ground on which the the defendants' justification could have been supported, as they appeared to have acted fairly and *bona fide*: and they observed that it seemed reasonable, if the searchers exercise their authority *bona fide*, and only seize such leather as in their judgment ought to be examined, that they should be protected: but the act of parliament affords them no such protection, it only empowers them to seize leather which is not tanned according to the true intent and meaning of the act; and according to the record of the pleadings in this case, it appeared that the defendants seized leather which the statute did not authorize them to seize. They added, that this case did not differ in principle from those of custom-house and excise officers, for *custom-house officers were, until a late act of parliament passed to protect them, liable to an action for seizing goods, if it ultimately turned out that the goods were not the subject matter of seizure, even though there was a probable cause.* Excise officers continued in this situation to a later time, upon a supposition that the statute respecting custom-house officers extended to them; and when it was discovered that they were not protected by the former act, the legislature made a similar law for their protection. So in the cases of justices of the peace and constables, the legislature have made laws in their favour, when acting in the execution of their office: all those instances shew the propriety of protecting persons acting under this act of parliament, when they act *bona fide;* but the legislature not having give them any protection, except when they seize leather of a certain description, the only question is whether the leather in question was or was not the subject of seizure, and that question is against the defendants by their own admission. 6 *Ter. Rep.* 443.

# INDICTMENTS.

AN INDICTMENT is an accusation at the suit of the king, by the oaths of twelve men of the same county wherein the offence was committed, returned to inquire of all offences in general in the county, determinable by the court in which they are returned, and finding a bill brought before them to be true. 2 *Hawk. c.* 25. 2 *Hale's Hist.* 153. Indictment what.

But when such accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a PRESENTMENT *. *Lambarde, b.* 4. *c.* 3. 2 *Hawk. c.* 25. Presentment what.

And when it is returned by jurors returned to inquire of that particular offence only which is indicted, it is properly called an INQUISITION. 2 *Hawk. c.* 25.

Formerly every indictment was in Latin, but now by stat. 4 *Geo.* 2. *c.* 26, and 6 *Geo.* 2. *c.* 14, all indictments, informations, inquisitions and presentments, shall be in English, and be written in a common legible hand, and not court hand; on pain of 50*l.* to him that shall sue in three months. To be in English.

And by 10 and 11 *Will.* 3. *c.* 23, no clerk of assize, clerk of the peace, or other person, shall take any fee, of any person bound over to give evidence against a traitor or felon, for the discharge of his recognizance; nor shall take more than 2*s.* for drawing any bill of indictment against any such felon †, on pain of 5*l.* to the party grieved, with full costs. And if he draw a bill defective, he shall draw a new one *gratis*, on the like pain. Charges of officers.

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* A presentment is a more comprehensive term than indictment, for regularly an indictment is an accusation given in against a person by the grand inquest for some misdemeanor, whereunto he is put to answer; but *presentments* not only include such indictments, but also some other informations, whereunto the party is not put to answer, as presentments of *felo de se*, of *fugam fecit*, of *deodands*, of deaths *per infortunium*, and many others. 2 *Hale's Hist.* 152.

And *Blackstone* says, a presentment, *properly* speaking, is the notice taken by the grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the king, as the presentment of a nuisance, a libel, and the like, upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer it. *Blackst. Com.* 301.

† The fees for drawing indictments for offences under the degree of felony are not limited by any statute.

The law respecting indictments will be treated of in the following order:

*I. Concerning the nature of an indictment, and how far it is considered as a prosecution at the suit of the king.*

*II. What offences are indictable.*

*III. How an indictment may be found.*

*IV. Concerning the form of an indictment.*

*V. Where the offence indicted may be laid jointly, and where severally.*

*VI. Where an indictment may be quashed.*

*VII. Malicious prosecutions.*

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I. *Concerning the nature of an indictment, and how far it is considered as a prosecution at the suit of the king.*

An indictment is a brief narrative of an offence committed by any person, which the public good requires should be punished; and therefore it is said to be a prosecution at the suit of the king merely. 2 *Hale's Hist.* 169.

Hence, from its being the king's suit, it is every day admitted that the party who prosecutes it is a good witness to prove it. 2 *Hawk.* c. 25. s. 3.

And from its being the king's suit, it is agreed that no damages can be given the party grieved upon an indictment, or any other criminal prosecution; notwithstanding the king, by his commission erecting a new court, expressly direct that the party shall recover damages by such a prosecution. 2 *Rol. Abr.* 83. *Cro. Car.* 531. 558. 2 *Hawk.* c. 25. s. 3.

Also where by statute damages are given to the party grieved by the offence intended to be redressed, it seems that they cannot be recovered on an indictment grounded on such statute, unless such method of recovering them be expressly given by the statute; but that they ought to be sued for in an action on the statute, in the name of the party grieved. 1 *Jones*, 380. *Cro. Car.* 448. 1 *Rol. Abr.* 220. 2 *Hawk.* c. 25. s. 3.

But although damages cannot be recovered on an indictment, yet the court of *King's Bench*, having the king's privy seal for that purpose, may give to the prosecutor the third part of the fine assessed on a criminal prosecution for any offence whatsoever. 1 *Keb.* 487. 2 *Hawk. c.* 25. *s.* 3.

Also it is every day's practice of that court, to induce defendants to make satisfaction to the prosecutors for the costs of the prosecution, and also for the damages sustained by the injury whereof the defendants are convicted, by intimating an inclination on that account to mitigate the fine due to the king*. 2 *Hawk.* c. 25. *s.* 3.

## *II. What offences are indictable.*

Not only capital offences, such as treasons and felonies, are indictable, but likewise all other crimes being of a public nature, and *mala in se*, though of an inferior kind, as misprisions, and all other contempts, all disturbances of the peace, all oppressions, and all other misdemeanors whatsoever of a public evil example against the common law, may be indicted. 2 *Hawk.* c. 25. *s.* 4.

To disobey an order of justices of peace is therefore an offence at common law, and indictable. *The K.* v. *Balme, Tr.* 17 *Geo.* 3. *Cowp.* 648.

But it must appear upon the face of the indictment that it is a legal order; for, if it is not so, disobedience to it is no crime. *The K.* v. *White and Eling, Caldecot's Cases*, 187.

And in an indictment for the disobedience of an order of justices of the peace, it must be directly and pointedly alleged that the order was served upon the party charged with such

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* It is not uncommon, says *Blackstone*, when a person is convicted of a misdemeanor, which principally and more immediately affects some individual, as a battery, imprisonment, or the like, for the Court to permit the defendant *to speak with the prosecutor* before any judgment is pronounced; and if the prosecutor declares himself satisfied, to inflict but a trivial punishment. This is done to reimburse the prosecutor his expences, and make him some private amends, without the trouble and circuity of a civil action.

But it surely is a dangerous practice, adds the learned commentator, and though it may be intrusted to the prudence and discretion of the judges in the superior courts of record, *it ought never to be allowed in local or inferior jurisdictions, such as the quarter sessions*; where prosecutions for assaults are by this means too frequently commenced, rather for private lucre than for the great end of public justice. *Above all it should never be suffered, where the testimony of the prosecutor himself is necessary to convict the defendant*: for by this means the rules of evidence are entirely subverted; the prosecutor becomes in effect a plaintiff, and yet is suffered to bear witness for himself. Nay, even a voluntary forgiveness, by the party injured, ought not in true policy to intercept the stroke of justice. 4 *Black. Com.* 363, 364.

disobedience, otherwise it will be held bad upon demurrer, and it is not sufficient to set forth that *after service of the order* the defendant refused. *Rex* v. *Moorhouse, Tr. Ter.* 25 *Geo.* 3. *Caldecot's Cases* 554.

And to solicit a servant to steal his master's goods is a misdemeanor, for which the party may be indicted at the quarter sessions;—this was decided in *the K.* v. *Higgins, Mic. Ter.* 42 *Geo.* 3. The defendant was indicted for "that he on —— at "&c. did falsely, wickedly, and unlawfully solicit and incite "one J.D. a servant of J.P. to take, embezzle, and steal a quantity of twist, of the value of 3*s.* of the goods and chattels of "his master J. P. aforesaid, to the great damage of the said "J. P. to the evil example, &c. and against the peace, &c." after judgment of the pillory and two years imprisonment, a writ of error was brought, and the following causes assigned for error: 1, that the indictment does not set forth any misdemeanor or offence, which the justices of the peace at their quarter sessions had jurisdiction to determine. 2, That it does not appear that J. D. the principal was ever convicted of the felony wherewith the defendant appears to be charged as accessary before the fact. 3, General error. By The Court (after two very elaborate arguments): This is a very grievous offence, and it is most important to the public to be made known as such: first, as to the offence itself, it must be admitted that an attempt to commit a felony is in many cases at least a misdemeanor; as for instance the common case of an attempt to ravish: it is said, however, that there is no instance of a mere solicitation to another to commit a felony being adjudged a misdemeanor; but the case of *the K.* v. *Scofield,* in *Caldecot's* Cases, 397, though not immediately in point, is in truth much stronger than the present, for there it was holden that the attempting to set fire to a man's own house, which was then only a misdemeanor, was itself a misdemeanor *per se,* and indictable. Also in the *K.* v. *Vaughan,* where the defendant had attempted to bribe the duke of Grafton, then a cabinet minister and a member of the privy council, to give him a place, it was held to be an indictable offence: these cases prove, that inciting another to commit a misdemeanor, is itself a misdemeanor: *à fortiori* therefore, it must be such to incite another to commit felony: it is also objected, that some act should be said to have been done in pursuance of the incitement; but this cannot be deemed necessary, for the gist of the offence is the incitement, and indeed if the incitement were to commit felony, and the fact ever committed, the inciter would himself be a felon, neither was it necessary in order to shew that this was only a misdemeanor, to negative the commission of the felony, none of the precedents of indictments to commit rape or robbery contain any such negative averment. But it is left to the defendant to shew if he please, that the misdemeanor was merged in the great-

er offence. Then as to the question of jurisdiction, it is most clearly an offence indictable at the quarter sessions, as falling in with that class of offences, which being violations of the law of the land, have a tendency, as it is said, to a breach of the peace, and are therefore cognizable by that jurisdiction. To this general rule, there are indeed two exceptions, namely forgery and perjury, why excepted we know not; but having been expressly so adjudged, we cannot break through the rules of the law; no other exceptions however have been allowed, and therefore this falls within the general rule. 2 *East's Rep.* 5.

But no injuries of a private nature, unless they some way concern the king, can be punished by way of indictment at common law. 2 *Hawk. c.* 25. *s.* 4.

Also generally, where a statute either prohibits a matter of public grievance, or commands a matter of public convenience, as the repairing the common streets of a town, every such disobedience of such a statute is indictable. 2 *Hawk. c.* 25. *s.* 4.

For what the statute says shall not be done, it becomes illegal to do, and is therefore the subject matter of an indictment; and that even without the addition of any corrupt motives; for though the want of corruption may be an answer to an application for an information, which is made to the extraordinary jurisdiction of the court, yet it is no answer to an indictment, where the judges are bound by the strict rule of law. 4 *Term Rep.* 457.

But if the party hath once been fined on an action on the statute, such fine is, it seems, a good bar to the indictment, because by the fine the end of the statute is satisfied. 2 *Hawk.* c. 25. *s.* 4.

Also if a statute extend only to private persons, or if it extend to all persons in general, but chiefly concerning disputes of a private nature, as those relating to distresses made by lords on their tenants, it is said that offences against such statute will hardly bear an indictment. *Sid.* 209. 2 *Mod.* 34. 1 *Mod.* 76. 288. 1 *Lev.* 229. *Raym.* 205. 1 *Vent.* 104. 2 *Inst.* 121. 232. 2 *Hawk. c.* 25. *s.* 4.

Also where a statute makes a new offence, which was no way prohibited by the common law, and appoints a particular proceeding against the offender, as by commitment, or action of debt or information, or the like, without mentioning an indictment, it seems to be settled at this day, that it will not maintain an indictment, because the mentioning the other methods of proceeding only seems impliedly to exclude that of indictment. 1 *Show.* 398. 3 *Keb.* 34. 273. *Cro. Jac.* 643, 644. 3 *Mod.* 79. 2 *Burrows,* 790.

But where a new offence is created by an act of parliament, and a penalty is annexed to it by a separate and substantive clause, it is not necessary for the prosecutor to sue for the penalty; but he may proceed by the way of indictment on the

prior clause, on the ground of its being a misdemeanor at common law. 2 *Hale's Hist.* 171. 1 *Burrows*, 545 4 *Term Rep.* 205.

And upon such indictment the party may be fined, but then it seems the fine ought not to exceed the penalty. 2 *Hale's Hist.* 171.

Also where a statute adds a new penalty to an offence prohibited also by the common law, it is in the election of the prosecutor to proceed either at common law, or on the statute; and if he conclude his indictment *contra formam statuti*, and cannot make it good as an indictment on the statute; yet if the indictment be good as an indictment at common law, it shall stand as such, and the words *contra formam statuti* shall be rejected. 2 *Hawk.* c. 25. *s.* 4. 5 *Term Rep.* 163.

### III. *How an indictment may be found.*

Every indictment is to be found by twelve lawful liege freemen * of the county wherein the crime was committed, returned by the proper officer. 2 *Hale's Hist.* 154.

To this end there goes out a precept, either in the name of the king or of two or more justices of peace, directed to the sheriff, whereby he is bound to return to every session of the peace, and every commission of oyer and terminer, and of general gaol delivery, twenty-four good and lawful men of the county, some out of every hundred, out of which the grand inquest at the sessions of the peace, oyer and terminer, or gaol delivery are taken and sworn, to inquire, present, do, and execute all those things, which on the part of our lord the king shall then and there be commanded them. 2 *Hale's Hist.* 154.

They must be *probi & legales homines*; therefore it is a good exception to one returned on a grand jury, that he is an alien or villein, attainted in a conspiracy, or *decies tantum*, or of perjury, or outlawed, or attainted of felony or *præmunire*. 2 *Hale's Hist.* 155.

They must also be freeholders, but to what amount is uncertain; which seems to be *casus omissus*, and as proper to be supplied by the legislature as the qualifications of the petit jury; which were formerly equally vague and uncertain, but are now settled by several acts of parliament. 1 *Hale's Hist.* 155. 4 *Black. Com.* 302.

However, they are usually gentlemen of the best figure in the county. 3 *Black. Com.* 302.

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* And an indictment may be found upon the oath of one witness only; unless it be for high treason, in which case two witnesses are required. 2 *Hawk.* c. 2. s. 129.

As many as appear upon this panel are sworn upon the grand jury, to the amount of twelve at least, and not more than twenty-three; that twelve may be a majority. 4 *Black. Com.* 302.

This grand jury are previously instructed in the articles of their inquiry by a charge from the judge who presides upon the bench, and they then withdraw to sit and receive indictments, which are preferred to them in the name of the king, but at the suit of any private prosecutor. 4 *Black. Com.* 303.

But this grand jury are only to hear the evidence on behalf of the prosecution; and it is said, in case there be *probable* evidence, they ought to find the bill; because the finding of an indictment is only in the nature of an inquiry or accusation, and the party is to be put on his trial afterwards. 2 *Hale's Hist.* 157.

And they are only to inquire upon their oaths, whether there be sufficient cause to call upon the party to answer it. 4 *Black. Com.* 303.

But it rather seems that a grand jury ought to have the same persuasion of the truth of the indictment, so far as their evidence goes, as a petty jury or coroner's inquest, and that they ought not to rest satisfied merely with *remote probabilities*; as they are sworn to present the truth and nothing but the truth. 4 *St. Tri.* 183. 4 *Black. Com.* 303.

And *Coke* observes that, as indictments are commonly found in the absence of the party accused, it is necessary there should be substantial proof. 3 *Inst.* 25.

Within what place the offence inquired of must arise.

The grand jury are sworn to inquire *pro corpore comitatus*, and therefore by the common law cannot regularly indict or present any offence which does not arise within the county or precinct for which they are returned. 2 *Hale's Hist.* 173. 2 *Hawk.* c. 25. s. 34.

And therefore it is a good exception to an indictment, that it doth not appear that the offence arose within such county or precinct. 2 *Hawk.* c. 25. s. 34.

Therefore it seems agreed as a general rule, that let the nature of the offence indicted be what it will, whether local or transitory, as seditious words, battery, &c. if it appear upon not guilty to have been committed in a different county from that in which the indictment was found, the party shall be acquitted *. 2 *Hawk*, c. 25. s. 35.

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* The grand jury therefore cannot regularly inquire of a fact done out of the county for which they are sworn, unless particularly enabled by act of parliament; and Mr. Justice *Blackstone* sets down the following statutes as instances, where such power has been given to them. 4 *Black. Com.* 303.

But it seems by the common law, if a fact done in one county prove a nuisance to another, it may be indicted in either. 2 *Hawk. c.* 25. *s.* 37.

So if A by reason of tenure of lands in the county of B be bound to repair a bridge in the county of C, if the bridge be in

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By 2 & 3 *Ed.* 6. *c.* 24, where a man is wounded in one county and dies in another, the offender (who before could not at common law be indicted in either, by reason that no complete act of felony was done in any one of them) may be indicted in the county where the party died.

And by stat. 2 *Geo.* 2. *c.* 21, if the stroke or poisoning be in *England*, and the death upon the sea or out of *England*, or *vice versa*, the offenders and their accessaries may be indicted in the county where either the death, poisoning, or stroke shall happen.

So where treason is committed out of the realm, it may be inquired of in any county within the realm, as the king shall direct, in pursuance of statutes 26 *Hen.* 8. *c.* 13. 33 *Hen.* 8. *c.* 23. 35 *Hen.* 8. *c.* 2. and 5 & 6 *Ed.* 6. *c.* 11.

And counterfeiters, washers, or diminishers of the current coin, together with all manner of felons and their accessaries, may by stat. 26 *Hen.* 8. *c.* 6. (confirmed and explained by 24 & 25 *Hen.* 8. *c.* 26. *s.* 75, 76) be indicted and tried for those offences, if committed in any part of *Wales*, before the justices of gaol delivery and of the peace in the next adjoining county of *England*, where the king's writ runneth: that is, at present in the county of *Hereford* or *Salop*; and not, as it should seem, in the county of *Chester* or *Monmouth*: the one being a county palatine where the king's writ did not run, and the other a part of *Wales*, in 26 *Hen.* 8.

Murders also, whether committed in *England* or in foreign parts, may by virtue of the statute 33 *Hen.* 8. *c.* 23, be inquired of and tried by the king's special commission in any shire or place in the kingdom.

By 10 & 11 *Will.* 3. *c.* 25, all robberies and other capital crimes committed in *Newfoundland* may be inquired of and tried in any county in *England*.

Offences against the black act, 9 *Geo.* 1. *c.* 22, may be inquired of and tried in any county of *England*, at the option of the prosecutor.

So felonies in destroying turnpikes, or works upon navigable rivers erected by authority of parliament, may by stat. 8 *Geo.* 2. *c.* 20, and 13 *Geo.* 3. *c.* 48, be inquired of and tried in any adjacent county.

By stat. 26 *Geo.* 2. *c.* 19. plundering or stealing from any vessel in distress, or wrecked, or making holes in a ship in distress, or stealing her pumps, may be prosecuted either in the county where the fact is committed, or in any county next adjoining; and if committed in *Wales*, then in the next adjoining English county: by which is understood to be meant such English county as by statute 26 *Hen.* 8. above mentioned, had before a concurrent jurisdiction with the great session, of felonies committed in *Wales*.

Felonies committed out of the realm, in burning or destroying the king's ships, magazines, or stores, may by stat. 2 *Geo.* 3. *c.* 24, be inquired of and tried in any county of *England*, or in the place where the offence is committed.

decay he may be indicted in the county of C, that he is bound *ratione tenuræ* of lands in the county of B, to repair the bridge. 2 *Hale's Hist.* 164.

Also by the common law, if one guilty of larceny in one county carry the goods stolen into another, he may be indicted in either; because the possession continuing constructively in the party robbed, every moment's continuance of the trespass is as much a wrong as the first taking, and the offence is therefore complete in both*. 2 *Hawk. c.* 25. *s.* 38. 1 *Hawk. c.* 33. *s.* 9. 1 *Hale's Hist.* 507.

But for a robbery, burglary, and the like, he can only be indicted where the fact was actually committed; for though the carrying away and keeping of the goods is a continuation of the original taking, and is therefore larceny in the second county, yet it is not a robbery or burglary in that jurisdiction. 4 *Black. Com.* 305.

How the grand jury may find a bill.

When the grand jury have heard the evidence, if they think it a groundless accusation, they used formerly to indorse on the back of the bill *ignoramus*, or *we know nothing of it*; intimating, that though the facts might possibly be true, that truth did not appear to them: but now they assert in English, more absolutely, *not a true bill*; or, which is the better way, *not found*; and then the party is discharged without further answer. But a fresh bill may afterwards be preferred to a subsequent grand jury. 4 *Black. Com.* 305.

If they are satisfied of the truth of the accusation, they indorse upon it *a true bill*, anciently *billa vera*: the indictment is then said to be found, and the party stands indicted. 4 *Black. Com.* 305.

But to find a bill, there must at least twelve of the jury agree: for so tender is the law of *England* of the lives of the subjects, that no man can be convicted at the suit of the king of any capital offence, unless by the unanimous voice of twenty-four of his equals and neighbours: that is, by twelve at least of the grand jury in the first place assenting to the accusation, and afterwards, by the whole petty jury of twelve more finding him guilty upon his trial. But if twelve of the grand jury assent, it is a good presentment, though some of the rest disagree; and the indictment, when so found, is publicly delivered into court. 4 *Black. Com.* 306.

Compelling the appearance of witnesses before a grand jury.

If a person whose evidence is material to the finding of a bill of indictment refuse to go before the grand jury to give evidence,

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* Also by 13 *Geo.* 3. *c.* 31, he may be indicted in *England* for larceny in *Scotland*, and carrying the goods with him into *England*, or *vice versa* (see vol. ii. p. 349), or for receiving in one part of the united kingdoms goods that have been stolen in another.—See vol. ii. p. 349.

the prosecutor may procure a subpœna to compel him thereto, *The K. v. Willes, Ea. Ter.* 35 *Geo* 3, 6 *Ter. Rep.* 295.

Cannot find bill part true part false.

It seems to be generally agreed, that a grand jury must find *billa vera* or *ignoramus* for the whole; and that if they take upon them to find it specially or conditionally, or to be true for one part only and not for the rest,* the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. 2 *Hawk. c.* 25. *s.* 2.

But this rule relates only to cases where the grand jury take upon themselves to find part *of the same indictment* to be true and part false, and do not either affirm or deny the fact submitted to their inquiry: but where there are two distinct counts, viz. one for a riot, and the other for an assault, and the grand jury find a true bill as to the assault, and indorse *ignoramus* as to the riot, this finding leaves the indictment, as to the count found, just as if there had been originally only that one count. *Cowper*, 325.

## *IV. Concerning the form of an indictment.*

Touching the forms of indictments there are two things considerable: 1. the caption of the indictment; 2. the indictment itself. 2 *Hale's Hist.* 165.

Caption.

FIRST, *As to the caption of the indictment.*] The caption of the indictment is no part of the indictment itself, but it is the style or preamble, or return that is made from an inferior court to a superior, from whence a *certiorari* issues to remove; or when the whole record is made up in form; for whereas the record of the indictment, as it stands upon the file in the court wherein it is taken, is only thus, *The jurors for our lord the king upon their oath present, &c.* when this comes to be returned upon a *certiorari*, it is more full and explicit†. 2 *Hale's Hist.* 165.

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* As if a grand jury indorse a bill of murder, *a true bill se defendendo*, or a *true bill* for manslaughter and not for murder: for it is only the circumstances of malice that make the difference, and the construction thereof in law lies not in the judgment of the jury, but of the judge. 2 *Roll.* 52. 3 *Bulstrode*, 206. 1 *Roll.* 408. 1 *Siderfin.* 230. *Foster's Cr. L.* 255.

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† Viz. it is of this form:

Monmouthshire. } *At the general quarter sessions of the peace holden at* Uske *in and for the county aforesaid, the —— day of —— in the —— year of the reign of our sovereign lord* George *the Third*, of Great Britain, France and Ireland, *king, defender of the faith, and so forth, before* J P and S P, *esqrs, and others their fellows, justices of our said*

The name of the county must be in the margin of the record, or repeated in the body of the caption. 2 *Hale's Hist.* 166.

And every such caption is erroneous which doth not set forth with proper certainty, both the court in which, and the jurors by whom, and also the time and place at which, the indictment was found. 1 *Hawk. c.* 25. *s.* 118.

1. *As to the court in which it was found.*] It is certain that every such caption must show that the indictment was taken before such a court as had jurisdiction over the offence; viz. *at the general sessions of the peace*, or the like. 2 *Hawk. c.* 25. *s.* 119. 2 *Hale's Hist.* 166.

Such of the justices as are by their commissions enabled to hold a session should also be mentioned in the caption; but it is not necessary to name all the justices by name, the rest may be supplied by the words *and others their fellows.* 2 *Hale's Hist.* 166.

And although in all commissions of oyer and terminer, gaol delivery, and of the peace, there be some of the quorum, without which there can be no sessions held, yet in the caption there need not be any mention whether any of them, or which of them are of the quorum, but generally as before; for it is sufficient if in the fact the sessions be held before him or them that are of the quorum, though not so mentioned in the return, and so is the usual course. 2 *Hale's Hist.* 167.

Saying *justices of our said lord the king assigned to keep the peace*, without adding *and also to hear and determine divers felonies*, is not good to remove an indictment, because though that clause be usually added to all commissions of the peace, yet they are not thereby justices of oyer and terminer; and that clause ought to be added to their return, because without that clause they cannot proceed by indictment. 2 *Hale's Hist.* 166.

2. *As to the jurors by whom it was found.*] It must return that the indictment was made upon oath. 2 *Hale's Hist.* 167.

It must also name the jurors that presented the offence, and therefore an indictment or presentment upon the oath of A, B, C, D, *and others*, is not good; for it may be the presentment was by a less number than twelve, in which case it is not good; for the party indicted may have an exception to some or one

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*lord the king, assigned to keep the peace of our said lord the king in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by the oath of* A, B, C, D, *&c.* [naming all the jurors] *good and lawful men of the county aforesaid, sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid, it is presented that* O O, *&c.* [setting out the indictment verbatim.]

of them, as that he is outlawed, in which case the indictment may be quashed by plea, though there be twelve besides without exception; for possibly that one, who is not *legalis homo*, may influence all the rest, and so vitiate the whole indictment. 2 *Hale's Hist.* 167.

*Hale* likewise says that they must be returned to be *good and lawful men*, and *of the county aforesaid.* 2 *Hale's Hist.* 167.

But this is said to be no exception to an indictment found in the court of *King's Bench*, or grand sessions, or counties palatine, and hath been often over-ruled, as to indictments in other courts; because all men shall be intended to be honest and lawful, till the contrary appear. 2 *Hawk.* c. 25. s. 16.

It seems also requisite to add this clause, *sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid.* 2 *Hale's Hist.* 167.—But in the case of *The K.* v. *Morgan* they were held not to be absolutely necessary. 1 *Ld. Raym.* 710.

3. *As to the time when it was found.*] It seems agreed that the caption must set forth a certain day and year when the court was holden, before which the indictment was found. 2 *Hawk. c.* 25. *s.* 127.

And an indictment taken at the adjourned sessions must show when the original sessions began, to bring it within the time prescribed by the statute. 2 *Strange*, 865.

Also if the court is stated to be held on an impossible day, it will vitiate the indictment, as where the general sessions was stated to be holden on Tuesday the 4th day of October in the 25th year, &c. and then that the same sessions were adjourned *till Thursday the 6th day of July aforesaid*, and that on Thursday the 6th *day of October aforesaid* the indictment was found. 1 *Term Rep.* 316.

And it hath been adjudged, that if the caption of an indictment describe the sessions as holden in the time past, and not in the time present; or as holden on such a day in such a year of the king, without ascertaining what king, it is insufficient; but it seems to be agreed that it is sufficient to express the year of the king, without adding that of our lord. 2 *Hawk. c.* 25. *s.* 127.

4. *As to the place where it was found.*] It seems agreed, that if the caption either set forth no place at all where the indictment was found, or do not show with sufficient certainty, that the place set forth is within the jurisdiction of the court before which it was taken, as where it sets forth the indictment as taken at a sessions of the peace holden for such a county at B, without showing in what county B is, otherwise than by putting the county into the margin, it is insufficient. 2 *Hawk.* c. 25. s. 128.

SECONDLY, *As to the indictment itself.*] The requisite and

most considerable parts of an indictment are, 1, *the name and addition of the party offending*; 2, *the day and year of the offence committed*; 3, *the place where it was committed*, 4, *upon or against whom committed*; 5, *the manner of the commission of it*; 6, *the fact itself and the nature of it*; 7, *the conclusion*. 2 *Hale's Hist.* 174.

Requisite parts of an indictment.

This saith *Hale* is the grammatical order wherein things are set down in the indictment, and upon these parts most of the considerations and observations touching indictments do arise. 2 *Hale's Hist.* 174.

Name and addition of the party.

1. *As to the name and addition of the party offending.*] The name of the party indicted regularly ought to be inserted, and inserted truly in every indictment. 2 *Hale's Hist.* 174.

But an indictment that the king's highway in such a place is in decay through the default of the inhabitants of such a town, is good without naming any person in certain. 2 *Hawk. c.* 25. *s.* 68.

Also by 1 *Hen.* 5. *c.* 5, in all indictments on which process of outlawry lieth, to the names of the defendants, *additions* shall be made of their estate, or degree, or mystery, and of the town, or hamlets, or places, and counties where they were or be conversant.

*But concerning these matters it is unnecessary to enlarge in this place, as the reader will find the subject amply treated of under the title* Misnomer and Addition.

Day and year of the offence.

2. *As to the day and year of the offence committed.*] This is necessary to be contained in the indictment. 2 *Hale's Hist.* 177.

For it is laid down as an undoubted principle in all the books that treat of this matter, that no indictment whatsoever can be good without precisely showing a certain year and day of the material facts alledged in it. 2 *Hawk. c.* 25. *s.* 77.

But if an indictment lay the offence on an uncertain or impossible day, as where it lays it on a future day, or lays one and the same offence at different days, or lays it on such a day, which makes the indictment repugnant to itself, it is void; and it hath been adjudged, that no defect of this kind can be helped by the verdict. 2 *Hawk. c.* 25. *s.* 77.

But it seems to be generally agreed, that the words *then and there* in the subsequent clauses of an indictment, are of the same effect as if the year and day mentioned in the former part of it had been expressly repeated. 2 *Hawk. c.* 25. *s.* 78.

And if they are omitted, judgment may be arrested. 2 *Strange* 901.

Also where an indictment charges a man with a bare omission, as the not scouring such a ditch, or the like, it is said that it need not show any time. 2 *Hawk. c.* 25. *s.* 79.

It is most regular to set forth the year by showing the year of the king; but this is not absolutely necessary, if the *very*

*year* be otherwise expressed it is sufficient, for that only is material. 2 *Hawk.* c. 25. s. 80.

And if it say on such a day last past, without showing in what year, that is good enough; for the certainty may be found out by the style of the sessions. *Lambarde* 491.

But it is agreed that a mistake in not laying an offence on the very same day on which it is afterwards proved upon the trial, is not material upon evidence. 2 *Hawk.* c. 25. s. 81.

But it is best in the indictment to set down the time as truly as can be, though it be not of absolute necessity to the defendant's conviction. 2 *Hale's Hist.* 179.

And this the rather because the jury are to find the indictment upon their oaths. *Dalton*, c. 184.

And if an indictment charge a man with having done such a nuisance, such a day and year, and *on divers other days*; it is void only as to the facts on those days which are uncertainly alleged, and effectual for the nuisance on the day specified. 2 *Hawk.* c. 82.

But if it charge a man generally with several offences at several times, without laying any one of them on a certain day, as with extorting divers sums of money, of divers subjects, for a passage over such a ferry, between such a day and such a day, it hath been adjudged that this is wholly void. 2 *Hawk.* c. 25. s. 82.

Because every extortion is a separate and distinct offence, requiring a separate and distinct punishment in proportion to the enormity of it; and if accumulated under a general charge, instead of being singly and certainly laid, it is impossible for the court to adapt the punishment to the measure of the crime. 4 *Mod.* 103.

Place.

3. *As to the place where it was committed.*] It is agreed by all the books, that every indictment at common law must expressly show some place wherein the offence was committed. which must appear to have been within the jurisdiction of the court in which the indictment was taken, and must be alleged without any repugnancy; for if one and the same offence be alleged at two different places, or at B aforesaid, where B was not before mentioned; or if the stroke be alleged at A, and the death at B, and the indictment conclude that the defendant *sic felonice murdravit* the deceased at A, the indictment is void. 2 *Hawk.* c. 25. s. 83.

But in some crimes no vill need be named, as upon an indictment of barretry, because he is a barretor every where, and it shall be tried *de corpore comitatus.* 2 *Hale's Hist.* 180.

Also if the county be put in the margin, and the indictment lays the fact as done at S in the county aforesaid, it is good, for it refers to the county in the margin. 2 *Hale's Hist.* 180.

But if there be two counties named, one in the margin, another in the addition of any part, or in the recital of an act of

parliament recited in the premises of the indictment, the fact laid at S in the county aforesaid vitiates the indictment; because two counties are named before, and it is uncertain to which it refers. *Cro. Eliz.* 739. 2 *Hale's Hist.* 180.

So if it state that the defendant, late of W in the county of B, *at the parish aforesaid*, made an assault; nothing can be intended concerning W, and the indictment will be bad; for there ought to appear on the face of the record some *certain venue;* and when the offence is laid *at the parish aforesaid*, and no parish is mentioned before, it is a fatal objection. *The K.* v. *Matthews, Hil.* 33 *Geo.* 3. 5 *Term Rep.* 162.

But a mistake of *the place* in which an offence is laid will not be material upon evidence on not guilty pleaded, if the fact be proved at some other place in the same county. 2 *Hawk.* c. 25. s. 84.

The person against whom committed.

4. *As to the name of the person upon or against whom the offence was committed.*] Wherever the person injured is known to the jurors his name ought to be put into the indictment. 2 *Hawk.* c. 25. s. 71.

But if they know not his name, an indictment of murder of a *certain person to the jurors unknown* is good: and so for stealing goods *of a certain person unknown.* 2 *Hale's Hist.* 181.

If A dying be buried, and B opens the grave in the night-time, and steals the winding sheet, the indictment cannot suppose them the goods of the dead man, but of the executors, administrators, or ordinary, as the case falls out. 2 *Hale's Hist.* 181. 12 *Co.* 112.

And if A deliver goods to B, a common carrier, to carry for him, and B. is robbed, the indictment may suppose them the goods of A, or the goods of B, at election; for B hath a kind of special property, because chargeable for them to A. 2 *Hale's Hist.* 181.

But there is no need of an addition of the person robbed or murdered, unless there be a plurality of persons of the same name; neither then is it essential to the indictment, though sometimes it may be convenient for distinction sake to add it; for it is sufficient if the indictment be true, namely, that J. S. was killed or robbed, though there are many of the same name. 2 *Hale's Hist.* 182.

And it hath been adjudged not to be necessary in an indictment of death to allege, that the person killed was *in the peace of God, and of our lord the king, &c.* though such words are commonly put into indictments; for they are not of substance, and perhaps the truth might be, that the party was at the time actually breaking the peace. 2 *Hawk.* c. 25. s. 73.

The manner of the commission of the offence.

5. *As to the manner of the commission of the offence.*] An indictment, as defined by *Hale*, is nothing else but a plain, brief, and certain narrative of an offence committed by any per-

son, and of those necessary circumstances that concur to ascertain the fact, and its nature, in which, in favour of life, great strictnesses have at all times been required. 2 *Hale's Hist.* 169.

And therefore it is laid down as a good general rule, that in indictments the special manner of the whole fact ought to be set forth with a scrupulous certainty, that it may judicially appear to the court that the indictors have not gone upon insufficient premises. *Cro. Eliz.* 147. 201. 2 *Hawk. c.* 25. *s.* 57. *Caldecot's Cases* 187.

Hence it hath been held, that no periphrasis or circumlocution whatsoever will supply those words of art which the law hath appropriated for the description of the offence; as *burglariously* in an indictment of burglary; *feloniously* in an indictment of felony, and the like. 2 *Hawk. c.* 25. *s.* 55. 2 *Hale's Hist.* 183, 184.

And in the case of murder it ought to be stated in what part of the body the person was wounded; and therefore if it be on his arm or hand, or side, without saying whether right or left, it is not good. 2 *Hale's Hist.* 185.

And regularly the length and depth of the wound is to be showed; but this is not necessary in all cases; as, namely, where a limb is cut off, so it may also be a dry blow. 2 *Hale's Hist.* 186.

But though the manner and place of the hurt and its nature be requisite, as to the formality of the indictment, and it is fit to be done as near the truth as may be, yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is sufficient to maintain the indictment. 2 *Hale's Hist.* 186.

So also it ought to be stated with what instrument it was done, namely, with *a certain sword* or the like. 2 *Hale's Hist.* 185.

But if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poisoning or strangling, it doth not maintain the indictment upon evidence. 2 *Hale's Hist.* 185.

Thus if A and B be indicted for murder, and it is laid that A gave the stroke, and B was present aiding and abetting; yet if it fall out upon evidence that B gave the stroke, and A was aiding and abetting, it maintains the indictment. 2 *Hale's Hist.* 185.

So if A be indicted for poisoning B, it must allege the kind of poison; but if he poisoned B with another kind of poison, yet it maintains the indictment, for the kind of death is the same. 2 *Hale's Hist.* 185.

It ought also to be shown in what hand the offender held the sword or instrument. 2 *Hale's Hist.* 185.

And regularly it ought to set down the value of the sword or

other weapon, or else say that it is of *no value;* for the weapon is a deodand forfeited to the king, and the township shall be charged for the value, if delivered to them; but this seems not to be essential to the indictment. 2 *Hale's Hist.* 185.

And from this certainty required in indictments, it hath been adjudged, that an indictment for burglary is insufficient if it do not show that it was done *in the night time. Cro. Eliz.* 483.

Therefore the time must be expressed in the indictment, that is to say, it must be stated that the offender *about the hour of* ——, *in the night of the same day, feloniously and burglariously, did break and enter.* 2 *Hale's Hist.* 179.

Also an indictment charging a man disjunctively is void; as that *he murdered* or *caused to be murdered; beat* or *caused to be beat; forged* or *caused to be forged;* for here are distinct offences, and it appears not of which of them the indictors have accused the defendant. 2 *Hawk. c.* 25. *s.* 58.

Also an indictment accusing a man in general terms, without ascertaining the particular fact laid to his charge, is insufficient; for no one can know what defence to make to a charge which is uncertain, nor can plead it in bar or abatement of a subsequent prosecution; neither can it appear that the facts given in evidence against a defendant on such a general accusation are the same of which the indictors have accused him; nor can it appear judicially to the court what punishment is proper for an offence so loosely expressed. 2 *Hawk. c.* 25. *s.* 59.

Hence, if an indictment against a man be for that he is a common thief, or common champertor, conspirator, common malefactor, or common robber, it cannot be good, because every indictment ought to contain the particular matter wherein the offence was committed. 2 *Hale's Hist.* 182.

But *common barreter and disturber of the peace of our lord the king,* &c. is good, because barretry is an offence known in law, and consists of divers particulars*; and the rest that is added thereunto are but aggravations of the offence, for barretry itself is a crime. 2 *Hale's Hist.* 182.

Also an indictment against one for being a common scold is good without setting forth the particulars. 2 *Hawk. c.* 25. *s.* 59.

Nor is it necessary to prove the particular expressions used, it is sufficient to prove generally that she is always (as the report says) scolding. 1 *Term Rep.* 754.

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*But though the indictment is good in a general form with these words, yet it has always been held that the prosecutor must give the defendant notice before the trial of the particular instances of the offences that are meant to be proved. 1 *Term Rep.* 754. See also title BARRETRY.

An indictment against a man for that he feloniously took and carried away goods and chattels of another, without showing what is certain, as *one horse, one ox*, or the like, is not good. *Lambarde*, 496. 2 *Hale's Hist.* 182.

Also the number of things stolen must be expressed in the indictment; for it is not sufficient to say *feloniously did steal sheep*, without expressing their number. 2 *Hale's Hist.* 182.

The value of any thing stolen must also be set down in the indictment, that it may appear whether it be grand or petit larceny. *Lambarde*, 497. 2 *Hale's Hist.* 183.

And the same certainty is required in an indictment for goods, as in trespass for goods, and rather more certainty; for what will be a defect of certainty in a declaration will be much more defective in an indictment. 2 *Hale's Hist.* 183.

But *Hawkins* says that it seems questionable, whether it be needful to set forth the value of the goods in an indictment of trespass for any other purpose than to aggravate the fine. 2 *Hawk. c.* 25. *s.* 75.

The word *unlawfully* has been adjudged not to be necessary in an indictment for a riot, because the fact indicted appears to be unlawful: and the same may be said to all other indictments at common law: but if a statute, in describing the thing prohibited, uses the word *unlawfully*, an indictment thereon is not good without it. 2 *Hawk. c.* 25. *s.* 96.

At common law the words *with force and arms* were necessary in indictments for offences which amount to an actual disturbance of the peace, as rescouses, assaults, and the like, but it seems that they were never necessary *where it would be absurd to use them*; as in indictments for conspiracies, slanders, cheats, escapes, and such like; or for nuisances in the defendant's own ground. 2 *Hawk. c.* 25. *s.* 90.

But however material these words might have been by common law, yet now it is enacted by 37 *Hen.* 8. c. 8, that the words *force and arms*, viz. with clubs, knives, bows and arrows, shall not of necessity be put in any indictment of inquisition, nor shall the parties indicted have any advantage in this respect by writ of error, plea, or otherwise. 2 *Hawk. c.* 25. *s.* 90.

Yet since this statute, exceptions to indictments of trespass, and such like, for want of the words *with force and arms*, where they have not been implied by other words, as *with a strong hand* or the like, have sometimes prevailed; and the necessity of them is said to be owing to this, that without them there can be no *capiatur* entered, nor fine to the king. 2 *Hawk. c.* 25. *s.* 91. 2 *Levinz.* 221.

Yet, says *Hawkins*, they have been often over-ruled, and it is not easy to show how they ever could prevail since the said

statute, consistently with the manifest purport of it: however it is certainly safe and advisable to make use of them when they are proper and pertinent, if it be to no other purpose than to aggravate the offence. 2 *Hawk. c.* 25. *s.* 90. 3 *Bac. Abr.* 109.

6. *As to the fact itself, and nature of it.*] An indictment must lay the charge against the defendant positively, and not by way of recital, as with a *whereas;* and it must expressly allege every thing material in the description of the substance, nature and manner of the crime; for no intendment shall be admitted to supply a defect of this kind. 2 *Hawk. c.* 25. *s.* 60. As to the fact itself and the nature of it.

Therefore if an indictment of murder want the words *of malice aforethought*, it is no answer that it hath the words *feloniously murdered*, which imply as much. 2 *Hawk. c.* 25. *s.* 60.

So if any indictment of death want an express allegation, that the party received the hurt laid as the cause of his death, and also that he died thereof, no implication will help it. 2 *Hawk. c.* 25. *s.* 60.

Also if an indictment for a feloniously breaking of prison, and commanding J. S. there imprisoned, to escape, do not expressly allege that J. S. did escape, it is no answer that it is fully implied in calling the offence a felonious breaking. 2 *Hawk. c.* 25. *s.* 60.

It is also a certain rule, that if one material part of an indictment be repugnant to another, or if the fact as laid be impossible or absurd, the indictment is void; as where one is indicted for having forged a writing, in which A was bound to B, which is impossible if the writing were forged; or for having disseised J. S. of land, wherein it appears, by the indictment itself, that he has no freehold; or for having entered peaceably on J. S. and then and there forcibly disseised him, or for having disseised him of land then being, and for ever since continuing to be, his freehold; or for having murdered J. S. at B, where by the indictment it appears that J. S. was only wounded at B, and died at C; or for selling iron with false weights and measures, which is not only absurd, as supposing that iron could be sold by measure, but inconsistent, in supposing that it was so sold, and yet at the same time sold by weight; or for being absent from church six months, between such and such a time, which appears to have contained only the space of eleven days; or for feloniously cutting down trees, &c. Yet where the sense is clear a small impropriety may be dispensed with; as where one is indicted for having mowed one acre of hay, which is said to be sufficient, and yet that which was mowed could not, at the same time of the mowing, in strictness be called hay, but grass only. 2 *Hawk. c.* 25. *s.* 62.

Also a repugnancy in an indictment in setting forth the offence of the accessary is as fatal as it is in setting forth that of

the principal; as where an indictment of death having laid the stroke on one day, and the death at another, charges the accessary with having abetted the principal at the time of the felony and murder only; for the time of the death, and consequently the murder, being subsequent to the stroke, it is repugnant to allege that the defendant abetted the stroke by being present at the time of the death. 2 *Hawk.* c. 25. s. 63.

But where several are present and abet a fact, and one only actually does it, an indictment may either lay it as done by them all, or specially as done only by the one and abetted by the rest. 9 *Co.* 67. *Plow.* 97.

But if it barely charge a man with having been present, it is void; because a man may be present innocently, and shall not be presumed to have been a party, where no circumstance is found that makes him so. 2 *Hawk.* c. 25. s. 64.

Also an indictment of a constable for having voluntarily and feloniously suffered a person arrested by him on suspicion of felony to escape, without showing what the felony was, and that it was actually committed, is said to be void by the uncertainty: but an indictment for knowingly suffering persons convicted of felony to escape, is said to be good, without finding expressly what the felony was, or that it was committed, if the record of conviction be set forth with convenient certainty; for that shows what the felony was, and that it was committed. 2 *Hawk.* c. 25. s. 66.

And *Hale* says, that figures to express numbers are not allowable in indictments, but numbers must be expressed in words*. 2 *Hale's Hist.* 170.

Also an indictment, grounded upon an offence made by act of parliament, must, *by express words*, bring the offence within the substantial description thereof; and those circumstances mentioned in the statute to make up the offence shall not be supplied by the general conclusion, against the form of the statute. 2 *Hale's Hist.* 170.

And so it is, where an act of parliament ousts clergy in certain cases, as murder, of *malice afore thought*; robbery, *in or near a highway*; stabbing one *not having struck first, nor having a weapon drawn*; for though the offences themselves were at common law, yet as they were at common law within clergy, the parties, if convicted, shall not be ousted of clergy unless these circumstances, as, *of malice afore thought*, or *in*

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* This rule does not hold in all cases; as for instance, bills, receipts, and the like, which always contain figures, are set out in indictments for forgery as they are, viz. the indictment states the receipt this—*which said receipt for money so falsely made, forged, and counterfeited, was, and is in the words, letters, figures, and cipher following, to wit*—1775, *June* 16, *bank notes*, c. 3210.—*Crown Cir.* 94.

or *near a highway*, &c. be expressed in the indictment. 2 *Hale's Hist.* 170.

But there is no necessity in any indictment on a public statute to recite such statute, for the judges are bound *ex officio* to take notice of all public statutes. 2 *Hawk. c.* 25. *s.* 100.

Yet if the prosecutor take upon him to do it, and materially vary from a substantial part of the purview of the statute, and conclude *against the form of the statute*, he vitiates the indictment, because it judicially appears to the court that there is no such foundation for the prosecution, as that whereon it is expressly grounded. 2 *Hawk. c.* 25. *s.* 101.

But no advantage can be taken of a variance from any part of a private statute, without showing it to the court in a proper manner; because otherwise such statute shall be taken to be as it is recited. 2 *Hawk. c.* 25. *s.* 103.

It seems also to be agreed, that a mis-recital of the place or day at which the parliament was holden vitiates an indictment. 2 *Hawk. c.* 25. *s.* 104.

Also a repugnancy in setting forth the time when a parliament was holden is fatal; as, if a statute be recited as made on such a day in the first and second years of such a king; for it is impossible that one and the same day should be in two years. 2 *Hawk. c.* 25. *s.* 104.

It seems also that the mis-recital of the title of a statute is fatal. 2 *Hawk. c.* 25. *s.* 104.

But it seems agreed, that there is no need to allege in an indictment, that the defendant is not within the benefit of the provisoes of a statute whereon it is founded, even though the statute in its purview, or enacting part, expressly take a notice of or refer to the provisoes; as by saying, that none shall do the thing prohibited, otherwise than in such special cases as are therein expressed*; but the party may have the benefit of the proviso on his plea of not guilty, and in like manner shall he have the benefit of any subsequent statute containing an exemption. 2 *Hawk. c.* 25. *s.* 113. 2 *Hale's Hist.* 170, 171.

7. *As to the conclusion.*] Regularly every indictment ought to conclude *against the peace of our lord the king*, and therefore an indictment without such conclusion is insufficient, though it be but for using a trade not being an apprentice: for every offence against a statute is *contra pacem*, and ought so to be laid. 2 *Hale's Hist.* 188. Conclusion.

And if a man be indicted for an offence supposed to be committed in the time of a former king, and it concludes against the peace of *our lord the now king*, it is insufficient; for it must be

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* For a difference herein between *indictments* and *convictions*, see vol. ii. p. 348; and vol. i. p. 557, note †.

supposed to be done *against the peace of that king* in whose time it was committed. 2 *Hale's Hist.* 189. 3 *Burrows*, 1903.

But if an offence be supposed to be begun in the time of one king, and continued in the time of his successor (as a nuisance), it must conclude against the peace of both kings, or else it is insufficient. 2 *Hale's Hist.* 189.

According to the opinion of *Hale*, it is not absolutely necessary that an indictment should conclude *against the king's crown and dignity*, though it be usual. 2 *Hale's Hist.* 188.

It seems however, notwithstanding this opinion of *Hale*, to have been the constant practice to insert those words; and the Editor of the *Crown Circuit Companion* says, that it cannot be discovered from any of the modern books, that any indictment has of late years been drawn without them.

It was formerly holden, that no indictment grounded on a statute, and concluding *against the form of the statute*, could be maintained as an indictment at common law, if it were not maintainable as an indictment on some statute, because it appears that the prosecution is grounded on a foundation which will not support it: but the law is now taken to be otherwise; and accordingly it hath been adjudged, that on a special indictment on the statute of Stabbing, the defendant may be found guilty of general manslaughter at common law, and the words *against the form of the statute* rejected as senseless. 2 *Hawk.* c. 25. *s.* 115.

But it is agreed, that a judgment on a statute shall never be given on an indictment which doth not conclude *against the form of the statute*; and therefore if the fact indicted be an offence prohibited by statute only, and the indictment conclude not against the form of the statute, no judgment can be given upon it; for though an indictment, which is redundant, may be helped by rejecting what is senseless, an indictment that is defective in a material part can be no way supplied. 2 *Hawk. c.* 25. *s.* 116.

And if there be more than one statute concerning the same offence, the latter of which only continues the former, without making any addition to it, or only qualifies the method of proceeding upon it, without altering the substance of its purview, it is safe to conclude against the form of the statute. 2 *Hawk.* c. 25. *s.* 117.

But where a statute hath been wholly discontinued, and is afterwards revived, there seems to have been some opinions that a prosecution on it ought to conclude *against the form of the statutes*. 2 *Hawk. c.* 25 *s.* 117.

Also where the same offence is prohibited by several independent statutes, or a new penalty is added by a subsequent statute to an offence prohibited by a former, it is said to be safer to conclude *against the form of the statutes* than *against the form of the statute*. 2 *Hawk.* c. 25. *s.* 117.

It is clearly agreed, that none of the statutes of amendment extend to criminal prosecutions, and therefore no indictment can be amended, in any case wherein an amendment is not allowable at common law. 2 *Hawk. c.* 25. *s.* 97.

Whether any defects in an indictment are amendable.

And agreeably hereto, it is laid down as a principle in some books, that the body of an indictment removed into the *King's Bench* from any inferior court whatsoever, except only those of *London*, can in no case be amended. 2 *Hawk. c.* 25. *s.* 97.

But it is said that the body of an indictment from *London* may be amended, because by the city charters the tenor of the record only shall be removed from thence. 2 *Hawk. c.* 25. *s.* 97.

Also a coroner may by rule amend his inquest by the notes, in matter of form before it is filed, but not after, for then it becomes a record of the court; and the same objection seems to lie against the amendment of it, as of an indictment. 2 *Hawk. c.* 25. *s.* 97.

But it seems to be agreed, that the *caption* of an indictment may on motion be amended by the clerk of assize or of the peace, so as to make it agree with the original record, at any time during the same term in which it came on; but not in a subsequent term. 2 *Hawk. c.* 25. *s.* 97.

But it is said that the caption of an inquisition shall never be amended after it is filed; for, being part of and drawn at the same time with the inquisition, greater exactness is required in it than in the caption of an indictment, which is left, as of course, to be drawn up as occasion shall require. 2 *Hawk. c.* 25. *s.* 97.

However, it is the common practice at this day, while the grand jury who found the bill is before the court, to amend it by their consent in a *matter of form*, as the name or addition of the party, or the like. 2 *Hawk. c.* 25. *s.* 98.

## V. *Where the offence indicted may be laid jointly, and where severally.*

Although the offences of several persons cannot but be several, because one man's offence cannot be another's, but every man must answer for himself; yet if it wholly arise from a joint act which is in itself criminal, as where several join in keeping a gaming-house, or in deer-stealing, or maintenance, extortion, or the like, the defendants may be indicted jointly and severally, as that *they and each of them did so and so*, or jointly only, for it sufficiently appears, that if all are joined in such act, each must be guilty; and therefore some of them may be convicted, and some acquitted. 2 *Hawk. c.* 25. *s.* 89.

But where the offences arise from a joint act which in itself is not criminal, but may be so by reason of some personal de-

fect peculiar to each defendant, as where divers follow a joint trade, for which the law requires a seven years apprenticeship, in which case each trader's particular defect, and not the joint act, makes him guilty, it seems most proper to indict him severally, and not jointly, because each man's offence is grounded on a defect peculiar to himself. 2 *Hawk.* c. 25. s. 89.

And for this reason indictments have been quashed for jointly charging several defendants for not repairing the streets before their houses, or for neglecting a day of fasting appointed by proclamation; and this is agreeable to the rule of law as to bringing actins on penal statutes, wherein several defendants shall not be joined, except it be in respect of some one thing in which all are jointly concerned. 2 *Hawk.* c. 25. s. 89, 90.

But yet where A, B, C, and D were indicted for erecting four several inns to the common nuisance, it was ruled that for several offences of the same nature several persons may be indicted in the same indictment; but then it must be laid that *they severally did so and so*; and for want of that word (*severally*) the indictment was quashed. 2 *Hale's Hist.* 174.

Also it is said in *Hale* to be common experience that twenty persons may be indicted for keeping disorderly houses or bawdy-houses; and they are daily convicted upon such indictments for the word severally makes them several indictments. 2 *Hale's Hist.* 174.

But several defendants cannot be joined in one indictment for perjury; for it is a separate act in each; and one may be desirous to have a *certiorari*, and the other not; and the jury on the trial of all may apply evidence to all, which is but evidence against one. 2 *Strange* 921.

See also in the case of the *K.* v. *Clendon and others*, where two prosecutors were joined in the same indictment for an assault and battery, the court held they were distinct offences. 2 *Strange*, 860. 2 *Lord Raym.* 1572. *Barnard, K. B.* 337. 2 *Sess. Cas.* 24.

But in the case of the *King* v. *Benfield and Saunders*, E. 33 *Geo.* 2, on an information against both for the same libel, it was held good, and the case of the *King* v. *Clendon* held not to be law; for cannot the king call a man to account for a breach of the peace because he broke two heads instead of one? It is a prosecution in the king's name for the offence charged; and not in the nature of an action, where each person injured is to recover separate damages. 2 *Burrows*, 984.

### *VI. Where an indictment may be quashed.*

By the common law the judges may, in discretion, quash any indictment for any such insufficiency in the body or caption of it, as will make a judgment given on it against the defendant

erroneous; but they are in no case bound so to do *ex debito justitiæ*, but may oblige the defendant to plead or demur; and this they generally do where the offence is of an enormous or public nature, such as in cases of perjury, nuisances, and the like; or where the indictment has been removed by *certiorari*, and a recognizance for procuring the trial of it has been forfeited. 2 *Hawk. c.* 25. *s.* 146. *Caldecot's Cases*, 432.

And to prevent collusion the court will not quash a defective indictment on the motion of the prosecutor, after plea, pleaded until another good indictment be found. *K. v. Dr. Wynn, Hil. Ter.* 42 *Geo.* 3. *East's Rep.* 226.

### *VII. Malicious prosecutions.*

For destroying and injuring a man's reputation by preferring malicious indictments or prosecutions against him, the law has given a very adequate remedy in damages, either by an action of *conspiracy**, or, which is the more usual way, by a special action on the case for a false and malicious prosecution. 2 *Black.* 126.

Therefore if a man be falsely and maliciously indicted of any crime that may prejudice his fame and reputation, he may bring his action. So if he be indicted of a crime that subjects him to peril of life or liberty. So though it touch neither his fame nor liberty; for it is injurious to his property by putting him to a needless expense. And the action may be brought as well against one who procures others to indict, as against the prosecutor. *Buller's Nisi Pri. 8vo. ed.* 13.

And an action on the case for a malicious prosecution may be founded upon an indictment, whereon no acquittal can be had. 3 *Black. Com.* 127.

As where a man is falsely and maliciously indicted of a crime which hurts his fame, and which is a scandal to him: though the indictment be insufficient or an *ignoramus* found; yet an action lies for the slander, because the mischief of that is effected. *Buller's Nisi Pr. 8vo. ed.* 13.

So an action will lie as well for damage by expense, as by scandal or imprisonment, though the indictment be insufficient; and therefore it may be brought by a husband for the expense of defending his wife. *Buller's Nisi Pr. 8vo. ed.* 13.

The plaintiff must produce and prove a copy of the acquittal on record†, and the substance of the evidence given on the in-

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* See the title Conspiracy, vol. i.

† In cases under the degree of felony, a copy of the indictment and acquittal may be had of course. 1 *Lord Raym.* 253. 1 *Black. Rep.* 385.

But in prosecutions of felony he cannot have a copy without leave of the court, and it is usual to deny such copy where there is any the least probable cause for the indictment. 1 *Lord Raym.* 253.

dictment is material, and the charges of the acquittal, and the circumstances which show the prosecution was malicious and without probable cause; he may likewise give in evidence the circumstances of the defendant, in order to increase the damages. *Bull. Nisi Pr. 8vo. ed.* 13.

But though an action do lie for a malicious prosecution, yet it is not to be favoured, and therefore if the indictment be found by the grand jury the defendant shall not be obliged to show a probable cause; but it shall lie upon the plaintiff to prove express malice. *Buller's Nisi Pr. 8vo. ed.* 14.

And the action ought not to be maintained without rank and express malice and iniquity. The grounds of it are, on the plaintiff's side, innocence; on the defendant's malice. *Buller's Nisi Pr. 8vo. ed.* 14.

However, as it may come to be left to a jury, it is advisable for the defendant to give proof of a probable cause, if he be capable of doing it; and for this purpose, proof of the evidence given by the defendant on the indictment is good. *Buller's Nisi Pr. 8vo. ed.* 14.

But where the facts lie in the knowledge of the defendant himself he must shew a probable cause, though the indictment be found by the grand jury, or the plaintiff shall recover without proving express malice. *Buller's Nisi Pr. 8vo. ed.* 14.

And though the plaintiff do prove malice, yet if the defendant shew a probable cause, he shall have a verdict, and the judge, not the jury, is to determine whether he had a probable cause; and therefore, where the plaintiff having brought an action against the defendant for a malicious prosecution for perjury, obtained a verdict, upon a motion for a new trial, the court set it aside (it appearing upon the report of the judge, that there was a probable cause), not as a verdict against evidence, but as a verdict against law. *Buller's Nisi Pr. 8vo. ed.* 14.

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*For the form of a recognizance to appear and give evidence on an indictment,* see vol. i. p. 767.

*For the form of a recognizance to prosecute and give evidence,* see the same vol. p. 780.

And the condition of a recognizance to answer to an indictment may be as follows:

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For it would be a very great discouragement to the public justice of the kingdom, if prosecutors who had a tolerable ground of suspicion were liable to be sued at law whenever their indictments miscarried. 3 *Black. Com.* 126.

The Condition *of the above* [or within] *written recognizance is such, that if the above bound* O O *do and shall personally appear* [*before the justices of our sovereign lord the king assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses and misdemeanors in the said county committed**] *at the next general quarter sessions of the peace to be holden at* ——— *in and for the said county, then and there to answer to an indictment to be preferred against him by* P A, *of* ———, *yeoman, for an assault and battery upon him the said* P A, *and to do and receive what shall by the court be then and there enjoined him, and shall not depart the court without licence, then the above* [or within] *written recognizance shall be void and of no effect, otherwise to remain in full force.*

See another form in vol. i. p. 271.

*Indorsing Warrants.* See Arrests, Div. vi.

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# INFANTS.

FROM the observations made, on the daily actions of infants, as to their arriving to discretion, the laws and customs of every country have fixed upon particular periods on which they are presumed capable of acting with reason and discretion; hence in our law the full age of man or woman is twenty-one years. 3 *Bacon's Abr.* 118.

Yet one having attained the years of discretion, that is, the age of fourteen, may be guilty of a capital offence, and equally liable to suffer as a person of the full years of twenty-one. 1 *Hale's Hist.* 16. 4 *Black. Com.* 23.

For on the attainment of fourteen years of age the criminal actions of infants are subject to the same modes of construction as those of the rest of society, the law presuming that the human mind has acquired at this period a complete sense of right and wrong. *Dr. and Stud.* c. 26. *Co. Lit.* 79. 171. 247. *Dalton*, 476, 505.

But infants under the age of discretion are said not to be punishable by any criminal prosecution whatsoever. 1 *Hawk.* c. 1. *s.* 1.

For during the interval between the age of fourteen years and

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* These words within crotchets may for brevity sake be omitted, if it is thought fit.

that of seven, the mind is *prima facie* presumed to be unacquainted with guilt; and these presumptions entertained in favour of innocence accumulate in an inverse proportion with the decrease and tenderness of the offender's years. 1 *Hale's Hist.* 25. 27. 434.

And from this supposed imbecility of mind the protective humanity of the law, will not, without anxious circumspection, permit an infant to be convicted on his own confession. *Cro. Jac.* 466. 1 *Hale's Hist.* 24. *Foster's Cr. L.* 70.

Yet, if it appear by strong and pregnant evidence and circumstances that he was perfectly conscious of the nature and malignity of the crime, as, if in murder he hides the body slain by him, makes excuses, or otherwise shows such signs of cunning, as demonstrate him capable of discerning between good and evil, the verdict of a jury may find him guilty, and judgment of death may be given against him *. 1 *Hale's Hist.* 20. 25. 434. 630. *Foster's Cr. L.* 71.

For malice makes up for the want of age; and the capacity of contracting guilt is measured more by the apparent strength of the offender's understanding than by years and days. 1 *Hale's Hist.* 630. 4 *Black. Com.* 23.

Thus a girl of thirteen has been burnt for killing her mistress: and one boy of ten and another of nine years old, who had killed their companions, have been sentenced to death, and he of ten years actually hanged; because it appeared upon their trials, that the one hid himself, and the other hid the body he had killed; and such hiding, as has been before observed, manifested a consciousness of guilt, and a discretion to discern between good and evil. 4 *Black. Com.* 23. 1 *Hale's Hist.* 27.

And there was an instance in the eighteenth century, where a boy of eight years old was tried at *Abingdon* for firing two barns; and it appearing that he had malice, revenge, craft, and cunning, he was found guilty, had judgment to be hanged, and was hanged accordingly. 1 *Hale's Hist.* 25. *n.* (t).

Thus also, in very modern times, a boy of ten years old was convicted on his own confession of murdering his bed-fellow. There appearing in his whole behaviour plain tokens of a mischievous discretion; and as the sparing this boy merely on account of his tender years might be of dangerous consequence to the public, by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by all the judges that he was a proper subject of capi-

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* But it is said in these latter cases the judges may respite judgment or execution, in order to the obtaining the king's pardon. 1 *Hawk. c.* 1. *s.* 8. 1 *Hale's Hist.* 27.

tal punishment †. *The Case of William York at Bury Assizes*, 1748. *Foster's Cr. L.* 72.

But if an infant be within the age of seven years he cannot be guilty of felony, whatever circumstances proving discretion may appear; for in presumption of law he cannot have discretion, and no averment shall be received against that presumption. 1 *Hale's Hist.* 27, 28.

And if he be indicted for such an offence as is in its nature capital, he must be acquitted. *Hale's Hist.* 20.

Therefore if a child under this age steal the goods, or fire the house of another, he cannot be punished for neither the larceny or the arson. 1 *Hale's Hist.* 19. 514. *Foster's Cr. L.* 113. 349.

As to Misdemeanors and offences that are not capital, in some cases an infant is privileged by his nonage; and herein the privilege is all one, whether he be above the age of fourteen or under, if he be under one-and-twenty years, but with these differences. 1 *Hale's Hist.* 20.

If an infant under the age of twenty-one years be indicted of any misdemeanor, as a riot or battery, he shall not be privileged barely by reason that he is under twenty-one years; but if he be convicted thereof by due trial he shall be fined and imprisoned; and the reason is, because upon his trial the court *ex officio* ought to consider and examine the circumstances of the fact, whether he was capable of mischief, and had discretion to do the act wherewith he is charged. 1 *Hale's Hist.* 20.

But if the offence charged by the indictment be a mere nonfeazance or omission, as not repairing a bridge, or a highway, or the like, then he shall be privileged by his nonage, if under twenty-one, though above fourteen years; for not having the command of his fortune till twenty-one he wants the capacity to do those things which the law requires. 4 *Black. Com.* 22.

So if A kills B, and C and D are present, and do not attach the offender, they shall be fined or imprisoned; yet if C were within the age of twenty-one years he shall not be fined nor imprisoned. 1 *Hale's Hist.* 21.

*For the rules to be observed in receiving the testimony of infants, see title* Evidence.

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† He was however from time to time reprieved, and at length had the benefit of his majesty's pardon, upon consideration of his entering immediately into the sea service. *Foster's Cr. L.* 73.

# INFORMATION CRIMINAL.

*I. Concerning the nature and several kinds of informations*

*II. In what cases an information will lie.*

*III. In what manner they are to be laid.*

*IV. How informations are to be filed and proceeded on.*

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*I. Concerning the nature and several kinds of informations.*

Information what it is.

AN information may be defined an accusation or complaint exhibited against a person for some criminal offence, either immediately against the king, or against a private person, which from its enormity or dangerous tendency, the public good requires should be restrained and punished; and differs principally from an indictment in this, that an indictment is an accusation found by the oath of twelve men, whereas an information is only the allegation of the officer who exhibits it. 3 *Bacon's Abr. tit. Inform.*

This difference between informations and indictments has made some men conceive, that this kind of proceeding was utterly unlawful, as being not only contrary to the original frame and nature of our laws, but also contrary to *Magna Charta*, and several other statutes, which require that no man shall be put to answer, but upon indictment or presentment. 3 *Bac. Abr. tit. Inform.*

But though, as my lord *Hale* observes, in all criminal cases the most regular and safe way, and most consonant to the statute of *Magna Charta*, is by presentment or indictment of twelve sworn men, yet he admits that for crimes inferior to capital ones, the proceedings may be by information; and this, from the long and frequent practice, is now certainly established as part of the law of the land; and therefore at this day the following kinds of informations may be exhibited, wherever the nature of the offence deserve such a proceeding. 2 *Hale's Hist. c.* 8.

The different kinds of information.

1st, For an offence principally and more immediately against the king, an information may be exhibited in the name of the

attorney-general; and such information may be filed without any application or leave of the court, and the party shall be obliged to answer the same; also the statute 4 & 5 *W.* 3, which requires a recognizance for payment of costs from persons exhibiting and prosecuting informations does not extend to informations filed by the king's attorney-general; and it is said that the court will not quash such information on motion, but will oblige the party to demur or plead thereto. 2 *Hawk.* c. 26. s. 1. 6 *Salk.* 372. 1 *Ld. Raym.* 370.

2dly, On application, and leave of the court, grounded on motion and affidavit of some misdemeanor, which, if true, doth from its evil tendency merit such prosecution, the court allows of the filing of an information in the name of the master of the *Crown office*; and of such kind of informations there are numberless precedents in the *Crown Office.* 2 *Hawk.* c. 26. s. 1. 3 *Bacon's Abr. tit. Inform.*

3dly, Where by many penal statutes the prosecution upon them is by the acts themselves limited to be by bill, plaint, information or indictment, there, without doubt, the prosecution may be by information as well as by any other of these methods*; also of common right such an information, or an action in the nature thereof, may be brought for offences against statutes, whether they be mentioned by such statutes or not, unless other methods of proceeding be particularly appointed, by which all others are impliedly excluded. 2 *Hale's Hist.* c. 20. 2 *Hawk.* c. 26. s. 2.

4thly, Informations in nature of a *quo warranto* may be, and frequently are exhibited, with leave of the court, for usurping privileges, franchises, *&c.* which in some respects is a civil suit, as it is used as a proper means to try a right, though it punishes the misdemeanor, such as the usurpation†. 3 *Bacon's Abr. tit. Inform.*

### *II. In what cases an information will lie.*

*Hawkins* says that it is every day's practice, agreeable to numberless precedents, *viz.* either in the name of the king's attorney-general or of the master of the *Crown-Office*, to exhibit informations for batteries,—cheats,—sending a challenge to another,—seducing a young man or woman from their parents in order to marry them against their consent, or for any other wicked purposes‡,—spiriting away a child to the plantations,—res-

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* This will be fully treated of under the title Information qui tam.

† It does not seem necessary to enlarge on this kind of information in the present work, as the subject does not fall within the scope of the principal design.

‡ And an information has been granted for taking away a young woman from her guardian, although Chancery has committed the offender for

cuing persons from legal arrests,—perjuries, and subornations thereof,—forgeries,—conspiracies, (whether to accuse an innocent person, or to impoverish a certain set of lawful traders, or to procure a verdict to be unlawfully given, by causing persons bribed for that purpose to be sworn on a *tales*) and other such like crimes, done principally to a private person, as well as for offences done principally to the king, as for libels,—seditious words*,—riots,—false news,—extortions†, nuisances, (as in not repairing highways, or obstructing them, or stopping a common river),—contempts, as in departing from the parliament without the king's license,—disobeying his writs,—uttering money without his authority,---escaping from legal imprisonment on a prosecution for a contempt,---neglecting to keep watch and ward,—abusing the king's commission to the oppression of the subject,—(*reproaching the office of magistracy, or defaming* the character of *magistrates. Carthew* 14, 15,)—making a return to a *mandamus* of matters known to be false, and in general any other offences against the public good, or against the first and obvious principles of justice and common honesty. 2 *Hawk. c.* 26. *s.* 1.

### *III. In what manner they are to be laid.*

As an information differs from an indictment in little more than this, that the one is found by the oath of twelve men, and the other is not so found, but is only the allegation of the officer who exhibits it; whatsoever certainty is requisite in an indictment, the same at least is necessary also in an information. 2 *Hawk. c.* 26. *s.* 4.

### *IV. How informations are to be filed and proceeded on.*

Information to be only granted on motion.

It seems to be the established practice at this day not to admit of the filing of any information, (except those exhibited in the name of his majesty's attorney-general) without first making a rule on the persons complained of to show cause: which rule is never granted but upon motion made in open court, and grounded upon affidavit of some misdemeanor, which, if true, doth either for its enormity or dangerous tendency, or other such like circumstances, seem proper for the most public prosecution; and if the person on whom such rule is made, having been person-

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a contempt. 2 *Strange* 1107—and even for taking an infant from her putative father, 9 *Strange*, 1162.

* And that although the offender has been previously punished, viz. in an academical way, by the vice chancellor. 1 *Black. R.* 37.

† As if a justice demand a shilling to discharge a warrant, and commit the party for not paying it.

ally served with it, do not, at the day given him for that purpose, give the court good satisfaction by affidavit, that there is no reasonable cause for the prosecution, the court generally grants the information; and sometimes, upon special circumstances, will grant it against those who cannot be personally served with such rule; as if they purposely absent themselves, or the like. 2 *Hawk. c.* 26. *s.* 8.

But it is a general rule not to grant an information for a private libel, which charges a *specific and particular* offence, such as the having been concerned in a certain monopoly, or the like; unless the prosecutor in the affidavit on which the rule to show cause is granted, hath sworn directly and positively to his innocence. 1 *Doug. 8vo. ed.* 283. 387.

However, this exculpatory affidavit is not insisted upon where the party libelled is abroad at a great distance; nor is it at all necessary where the subject matter of the libel is general imputation, such as, that the party is a traitor, a thief, a sodomite, or the like, for it would be absurd to require a prosecutor to deny such a general charge. 1 *Doug. 8vo. ed.* 390.

And this rule in regard to libels holds equally good when the application is grounded upon acts of injustice done to individuals, under the pretence of improper acts done by them; therefore the court will not grant an information against a magistrate for having improperly convicted a person, unless the party complaining makes an affidavit that he is innocent of the fact with which he was charged. *The K.* v. *Webster, Tr.* 29 *Geo.* 3. 3 *Term Rep.* 388.

**Recognizance to be entered into before filed.**

By 4 *Will. & Mar. c.* 18, *the clerk of the crown in the court of King's Bench shall not, without express order given in open court, file any information for any trespass, battery, or other misdemeanor: or issue any process thereupon, before he shall have taken a recognizance from the person procuring such information, with the place of his abode, title, or profession, to be entered in to the person against whom such information is to be exhibited, in the penalty of* 20*l. that he will effectually prosecute such information, and abide by and observe such orders as the court shall direct; which recognizance the clerk of the crown,* and also every justice of peace (where the cause of such information shall arise), *are empowered to take;—and the clerk of the crown shall make an entry thereof upon record, and shall file a memorandum thereof in his office.* s. 2.

**Within what time information to be tried.**

*And in case any person, against whom any information shall be exhibited, shall appear and plead to issue, and the prosecutor shall not at his own costs within one year after issue joined procure the same to be tried,—or if upon such trial a verdict pass for the defendant,—or in case the informer procure a noli prosequi, the court is authorized to award to the defendant his costs, unless the judge before whom such information shall be tried, shall at the trial certify upon record, that*

*there was a reasonable cause for exhibiting such information; and in case the informer shall not, within three months after the costs taxed and demand made, pay to the defendant the said costs, the defendant shall have the benefit of the said recognizance.* s. 2.

*But nothing in this act shall extend to any other informations than such as are exhibited in the name of their majesties coroner or attorney in the court of King's Bench, commonly called the master of the Crown Office* *. s. 7.

*Trespasses, batteries, or other misdemeanors.*] This statute extends to all *informations whatsoever* exhibited by the master of the *Crown Office*; and though it may be objected, that an information in the nature of a *quo warranto*, though a proper remedy to try a right, is not within the meaning of the words *trespasses, batteries, or other misdemeanors*, which may be reasonably construed to intend such other misdemeanors only as are of an inferior nature, like what have been already specified; yet as this is a remedial law, and ought to be largely construed, and such informations may be as vexatious as any other, and always suppose an usurpation of some franchise, and every such usurpation is a misdemeanor, it hath been settled that this statute doth extend to them. 2 *Hawk.* c. 26. *s.* 7.

*Or issue out any process thereupon before he shall have taken a recognizance.*] The meaning of this statute is, that the clerk of the crown shall not file any information without leave; nor issue process thereupon without recognizance. *Cas. Temp. Ld. Hardw.* 247.

And if process be issued on such information before such recognizance is given as the statute directs, the party may move the court to set it aside, as having issued contrary to the directions of the statute. 2 *Hawk.* c. 26. *s.* 10.

*The court is authorized to award to the defendant his costs, unless the judge before whom such information shall be tried shall at the trial certify.*] No costs can be had on this statute on an acquittal at a trial at bar, not only because these words seem only to have a view to trials at *nisi prius*, but also because a cause which is of such consequence as to be thought proper for a trial at bar cannot well be thought within the purview of the statute, which was chiefly designed against trifling and vexatious prosecutions. 2 *Hawk.* c. 26. *s.* 11.

And if there be several defendants, and some of them acquitted, and others convicted, none of them can have costs†. 2 *Hawk.* c. 26. *s.* 12.

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* Hence informations exhibited by the attorney-general *ex officio*, remain as they were at the common law. 2 *Hawk.* c. 26. *s.* 11.

† For till 8 & 9 *Will.* 3. *c.* 11, (which provided that in trespass, as-

*Shall at the trial certify.*] If the prosecutor does not apply to the judge at the time of trial for this certificate, and obtain the same, he must at all events pay costs, whether the prosecution were reasonable or not; for the court above is bound of right to award them, whether the acquittal were upon the merits, or only from a slip in point of form, and howsoever notorious the offence might be; for where the court is authorized by statute to do a matter of justice to the party, upon certain circumstances, it has no discretionary power of considering whether it ought to do it or not, when a case appears within those circumstances; and the statute being general as to all cases, wherein the judge who tries the information doth not certify a reasonable cause, it seems to be wholly left to the judge to consider whether the prosecution were reasonable or not, and it is the prosecutor's folly not to apply to him. 2 *Hawk.* c. 26. s. 13.

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# INFORMATION QUI TAM.

AN information qui tam is partly the suit of the king and partly the suit of the party. 2 *Hawk.* c. 26. s. 16.

And this having a great affinity with an action qui tam * on the statute, the consideration of both will fall under the present title, and that in the following order:

I. *In what cases they lie.*

II. *What ought to be the form of them.*

III. *In what courts they may be brought, and where laid.*

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sault, false imprisonment, or ejectment against several, every one acquitted should recover his costs, unless the judge should certify in the record that there was a reasonable ground for making him a defendant, no plaintiff ever paid any costs in any action, if but one defendant were found guilty, and the 4 & 5 *Will.* & *Mar.* cannot be intended to make prosecutors otherwise liable than as plaintiffs then were in other actions. *Salk.* 197. *Buller's Nisi Pr.* 334.

* They are called *qui tam* because they are prosecuted or brought by a person *qui tam pro domino rege quam pro seipso*, &c. that is, *who*

IV. *Within what time they may be brought.*

V. *What persons are disabled to bring such an information or action.*

VI. *Whether there may be a nonsuit.*

VII. *In what cases there shall be costs.*

VIII. *How the defendant may plead.*

IX. *Whether the penalty of a penal statute may be compounded.*

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### I. *In what cases they lie.*

They will lie on no statute which prohibits a thing as being an immediate offence against the public good in general, under a certain penalty, unless the whole or part of such penalty be expressly given to him who will sue for it; because otherwise it goes to the king, and nothing can be demanded by the party. 2 *Hawk.* c. 26. *s.* 17.

But where such statute gives any part of such penalty to him who will sue for it by action or information, any one may bring such action or information, and lay his demand, *as well for our lord the king, as for himself.* Ibid.

Also where a statute prohibits or commands a thing, the doing or omission whereof is both an immediate damage to the party, and also highly concerns the good of the public, the honour of the king, or of his supreme courts of justice, the party grieved may, and, as some say, ought to bring his action on such statute *as well for our lord the king as for himself*, especially if the king be entitled to a fine. *Ibid.*

### II. *What ought to be the form of them.*

It is agreed that an action or information on a public statute

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*as well for our lord the king, as for himself, in that behalf sues.* And they both lie, wherever a statute gives a penalty for the neglect of some duty or the commission of some crime, part to the king, the poor, or some other public use, and part to the informer or prosecutor.

The action qui tam is also sometimes called *a popular action,* because it is given to the people in general.

need not recite the statute on which it is grounded, whether the offence be such only because prohibited, or be an evil in its own nature, and whether it be prohibited by more than one statute; or by one only; for the judges are bound *ex officio*, to take notice of all public statutes. 2 *Hawk. c.* 25. *s.* 100. *c.* 26. *s.* 18.

But if the prosecutor take upon him to recite the statute, and materially varies from a substantial part thereof, this is fatal, because it does not judicially appear to the court that there is such a foundation for the prosecution as that whereon it is expressly grounded. 2 *Hawk. c.* 25. *s.* 100. *c.* 25. *s.* 18.

But if an information contain several offences against a statute, and be well laid as to some, and defective as to others, the informer may have judgment for what is well laid; as where the words of the statute are fully pursued in the description of some of the offences, and not of others; or where the time is in part certain, and in part uncertain. 2 *Hawk. c.* 26. *s.* 19.

Also an action or information qui tam need not conclude *against the peace* or *in contempt of our lord the king*, as an indictment must. *Cro. Jac.* 529. *Cro. Eliz.* 835.

But it seems agreed that every information must be in this form, viz. that the informer, *as well for our lord the king as for himself*, even where it is brought on a statute which gives one third part of the penalty to a third person; but there is a great variety in the form of such informations in other respects, for sometimes they say that the action accrues to the informer to demand the forfeiture for the king and himself; sometimes that it accrues to the king and to the informer; sometimes that it accrues to the king and to the informer, and to J S, viz. where it is divided into three parts; and sometimes they have no clause at all of this kind. 2 *Hawk. c.* 26. *s.* 20.

And *Hawkins* doubts if it be not fatal to have any such clause, where the penalty is not recoverable by the information, but requires a subsequent one grounded on the conviction. 2 *Hawk. c.* 26. *s.* 20.

And he says, that regularly it is safest for every such information or action to demand the very sum due to the informer, and neither more nor less; as it hath been adjudged, that if an action on a statute demand the whole forfeiture for the informer, where the statute gives part of it to the king, it is insufficient; and it hath also been holden, that if the information make no demand at all, or demand more or less * for the party than appears to be his due, it is insufficient as to him; though it may

* As for instance, if a common informer were to sue for the single value of money won at play, when 9 *Ann. c.* 14, gives the treble value. *Buller's Nisi Prius*, 196.

perhaps be good as to the share of the forfeiture given to the king. 2 *Hawk. c.* 26. *s*. 21.

And where the penalty is given for continuing such a practice for a certain time, or for not doing such an act within such time, the information must be very particular in bringing the offence within the time prescribed. 1 *Bacon's Abr*. 39.

Therefore in an action on a statute which requires some officers, at one certain time after their admission, and others at another, to qualify themselves by certain acts, it ought expressly to show the time when the defendant was admitted to his office, and that he neglected to qualify himself in the time limited; and also, that he actually exercised his office after such neglect. *Lutw*. 162. 2 *Hawk. c.* 26. *s*. 22.

### III. *In what courts they may be brought, and where laid.*

Informations on penal statutes to be prosecuted in the courts of the counties where the offences were committed.

By 21 Jac. 1. c. 4, *all offences against any penal statute, for which any common informer* may ground any popular action, bill, plaint, suit or information, before the justices of assize, or nisi prius, or of general gaol delivery, or of oyer and terminer, or justices of peace in their general or quarter sessions* (A),

* *Any common informer.*] This statute therefore doth not extend to any suit by a party grieved, or by the attorney general; but only to those brought by common informers. 2 *Hawk. c.* 26. *s*. 39.

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(A) The following is the form of an information qui tam, at a general quarter session of the peace. *See Dogherty's Cr. Cir. Com.* 404.

Monmouthshire. } BE it remembered, *that* G B, *late of the parish of* ——, *in the county of* M, *gent. who, as well for our sovereign lord the now king as for himself, doth prosecute in this behalf, cometh before the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county of* M, *and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, at their general quarter session of the peace holden at the Guildhall in* U, *in and for the said county, on Wednesday, the* —— *day of* ——, *in the* —— *year of the reign of our sovereign lord George the Third, in his proper person, and as well for our said lord the king as for himself giveth*

*(except offences against the statutes concerning recusancy, maintenance, champerty, or buying of titles, the king's customs, or transporting gold, or silver, or munition, or wool, or leather,* s. 5), *shall be prosecuted before the justices of assize, or nisi prius, or of general goal delivery, or of oyer and terminer, or before the justices of the peace of every county, city, borough, or town corporate, having power to hear and determine the same, in any of the courts, places of judicature, or liberties aforesaid, at the choice of the parties who shall prosecute, and not elsewhere, save only in the said counties, or places usual for those counties.* s. 1.

*And the like process in every popular action, bill, plaint, information or suit, shall be had, as in an action of trespass,* vi et armis, *at common law* *. s. 1. Process on informations

*And in all suits on penal statutes, the offence shall be laid in the proper county; and if on the general issue, the offence be* to be laid in the proper county.

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* And consequently, the process in all such suits must be by attachment, or *pone per vadios;* and after, by distress infinite, where, by the return, the party appears to be sufficient, otherwise by capias. 2 *Hawk. c. 27. s. 13.*

But the usual practice of the *Crown-Office*, on a criminal information is first to award a subpœna; and after the return thereof, if no appearance be entered in four days, and an affidavit be made of the subpœna, to make out a capias of course, where the defendants are informed against in their private capacity, and a *distringas* where they are sued as a corporation aggregate. 2 *Hawk. c. 27. s. 14.*

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*the court here to understand, and be informed, that* O O, *late of* ——, *in the county aforesaid, yeoman, on, &c.* [Here insert the offence, according to the statute] *against the form of the statute in such case made and provided: whereupon the said* G B, *as well for our said lord the king as for himself, prayeth judgment of the court in the premises; and that the said* O O *may forfeit the sum of* ———, *according to the form of the statute aforesaid; and that he the said* G B *may have one moiety thereof according to the form of the said statute; and also, that the said* O O *may come here into court, to answer concerning the premises; and there are pledges of prosecuting, to wit,* John Doe *and* Richard Roe. *And hereupon it is commanded to the said* O O, *that, all other things omitted and all excuses laid aside, he be in his proper person at the next general quarter session of the peace, to be holden for the said county, to answer as well to our said lord the king as to the said* G B, *who, as well for our said lord the king as for himself, doth prosecute, of and concerning the premises; and further to do and receive what the said court shall consider in this behalf.*

*not proved in the same county in which it is laid, the defendant shall be found not guilty.* s. 2.

*And no officer shall receive, file, or enter of record any information, bill, plaint, count, or declaration, till the informer hath made oath before some of the judges of the court, that the offence was not committed in any other county than where it is laid to be done ; the oath to be there entered of record*†. *s.* 3.

In the construction of this statute it hath been holden, that no action of debt, or other information, or other suit whatever can be brought on any penal statute made before 21 *Jac.* 1, in any of the courts of *Westminster Hall*, for an offence not excepted by the statute, and for which the offender may be prosecuted in the country, unless such offence shall be committed in the same county in which such court shall sit ; and as to the objection, that by this restraint of suits on penal statutes to the said courts, the offence would become dispunishable by the offender removing from the county, it may be answered, that he may be sued to an outlawry, in the same manner as in an action of trespass. 2 *Hawk. c.* 26. *s.* 34.

But where a subsequent statute gives liberty to sue for a penalty by *information*, *debt*, *plaint*, or any other remedy, *in any court of record generally*, it so far impliedly repeals the restraint of 21 *Jac.* 1, and consequently leaves the informer at his liberty to sue in the courts of *Westminster Hall.* 1 *Salk.* 372. *Hawk. c.* 26. *s.* 34.

Neither does the statute give jurisdiction to the courts therein mentioned, over any offences in relation to which they had none before ; for it only appoints, that where offences might have been brought in the courts at *Westminster*, or before justices of assize, oyer and terminer, or of the peace, such informations shall in future be brought before such justices, in the counties where the offence was committed, and that for the ease of the subjects, who are defendants. *Cro. Car.* 112.

And therefore suits for such offences in relation to which they had no jurisdiction before must be brought in the courts at *Westminster*, in the same manner as before. 2 *Hawk. c.* 26. *s.* 36.

For it is to be observed, that no information by a common

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† *The oath to be there entered of record.*] It hath been adjudged, that an officer, by receiving an information without such a previous oath, that the offence arose in the same county, doth not make the proceedings upon it erroneous ; and therefore the omission of it cannot be pleaded, or assigned for error ; for, although the officer be punishable for taking it without oath, yet the information is well enough without it ; for the act is only directory to the officer, but doth not intend that such oath should be made parcel of the record. *Cro. Car.* 316. *Freeman's Rep.* 376. 2 *Keble*, 363. 2 *Ter. Rep.* 264.

informer may be brought before justices of peace, justices of assize, or justices of oyer and terminer, unless specially directed. *Jones*, 193. *pl.* 3.

For where any penal law gives power *to justices of peace*, of assize, or of oyer and terminer, to hear and determine offences against the statute, and says no more—this is by way of *indictment*, and not by *information*, bill, or plaint, unless this was specially named. *Jones*, 193. *pl.* 3.

Neither doth the said statute hinder the removal of any cause into the *King's Bench* by *certiorari* *; after which it may be tried, either there or in the county, by *nisi prius*. 2 *Hawk. c.* 26. *s.* 37.

Also, where a statute limits suits by an informer *qui tam* to other courts; yet any one may by construction of law, exhibit an information in the *Exchequer*, for the whole penalty for the use of the king. 2 *Hawk. c.* 26. *s.* 25.

### *IV. Within what time they may be brought.*

By 31 Eliz. c. 5, *all actions, suits, bills, indictments, or informations on any penal statute, whereby the forfeiture is limited to the king, shall be brought within two years after the offence committed; if limited to the king, and to any other who shall prosecute, then within one year; and in default of such prosecution, then to be brought for the king in two years after that year ended, provided, that if they are limited by the statute to be brought within shorter time, then they shall be brought within such time limited.* s. 5.

And by 18 Eliz. c. 5, *upon every information which shall be exhibited by a* (common) *informer (except for maintenance, champerty, buying of titles, or embracery), a special note shall be made of the day, month, and year of the exhibiting thereof; and it shall be taken to be of record from that time forward, and not before: and no process shall be issued on such information, till it be exhibited in form aforesaid.* s. 1.

And by 21 Jac. 1. c. 24, *no officer shall enter any information, bill, or plaint, count, or declaration, till the informer hath made oath before some of the judges of the court that he believes in his conscience that the offence was committed within a year before the information or suit: the oath to be there entered of record* †. s. 3.

In the construction of these statutes, it seems to have been holden:

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* It being a settled rule, that the jurisdiction of the court of *King's Bench*, to grant a *certiorari* cannot be taken away but by express words. See vol. i. p. 447.

† For the construction of this clause, see p. 64 ante, note*

1. That if an offence, prohibited by any penal statute, be also an offence at common law, the prosecution of it, as of an offence at common law, is no way restrained by any of these statutes. 2 *Hawk.* c. 26. *s.* 44.

2. That if a suit on a penal statute be brought after the time limited, the defendant need not plead the statute specially, but may take advantage of it on the general issue. 2 *Hawk.* c. 26. *s.* 45.

3. That if an information *qui tam* be brought after the year on a penal statute, which gives one moiety to the informer, and the other to the king, it is naught only as to the informer, but good for the king. 2 *Hawk.* c. 26. *s.* 46.

4. That the party grieved is not within the restraint of these statutes, but may sue in the same manner as before. 2 *Hawk.* c. 26. *s.* 47.

And it seems questionable, whether a suit by a common informer on a penal statute, which first gives an action to the party grieved, and in his default, after a certain time, to any one who will sue, be within the restraint of these statutes. 2 *Hawk.* c. 26. *s.* 49.

5. It has been determined, that suing out a *latitat* within the year, is a sufficient commencement of the suit to save the limitation of time. *Carthew*, 232. *Shower*, 353.

But if the writ was not sued out till after the year, though by relation it would be within the time, the plaintiff ought to be nonsuited. 3 *Burrows*, 1241. *Bull. N. Pri.* 195.

And the real day of suing out the writ, which shall be considered as the commencement of the suit, may be shown in the pleadings. 3 *Burrows*, 1423.

### *V. What persons are disabled to bring such an information or action.*

It seems to have been held, that a corporation cannot sue as a common informer. 2 *Strange*, 1241.

And by 31 Eliz. c. 5, *no person, other than the party grieved, shall be received to inform, or sue upon any penal statute, that before that time hath been for any misdeameanor, by any order of the king's courts, ordered not to follow or pursue any suit, upon any penal statute* *. s. 1.

And by 18 Eliz. c. 5. s. 1, *every informer upon any penal statute shall exhibit his suit in proper person, and pursue the same only by himself, or by his attorney in court, and he shall not use any deputy at all.* s. 1.

Therefore an infant cannot be an informer, for he must sue by guardian. *Buller's Nisi Pri.* 196.

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* See Div. IX. *infra.*

And he cannot be an attorney, because he cannot be sworn. *March*, 92.

When a statute creates a penalty, and directs that one moiety shall be to the use of the king, and the other to the common informer, the king may sue for the whole by an information filed in the court of King's Bench, by the attorney-general, unless a common informer has commenced a suit *qui tam*, for the penalty. *The K. v. Hymen, Ea. 38 Geo. 3. 7 Ter. Rep.* 536.

### VI. *Whether there may be a nonsuit.*

Notwithstanding the king cannot be nonsuit in any information or action wherein he himself is the sole plantiff, yet any informer *qui tam*, or plaintiff in a popular action, may be nonsuit, and hereby wholly determine the suit, as well in respect of the king as of himself. 2 *Hawk. c.* 26. *s.* 52.

Also the attorney-general may enter a *noli prosequi*, which has the effect of a nonsuit, to any information or action brought by the king only. 2 *Hawk.* c. 26. *s.* 52.

### VII. *In what cases there shall be costs.*

Against the defendant.

An informer on a popular statute shall in no case whatsoever have his costs, unless they be expressly given him by the statute. 2 *Hawk*. c. 26. *s.* 57.

But wherever a statute gives a certain penalty to the party grieved he is entitled to his costs within the statute of *Gloucester*, 6 *Ed.* 1. c. 1, which gives costs in all cases where the party is to recover damages; for otherwise it would be in vain for him to sue, since in many cases the costs would exceed the penalty. 2 *Hawk. c.* 26. *s.* 57.

But where the duty is uncertain, as to recover treble damages, as upon the statute of waste, or on 2 *Ed.* 6. for not setting out of tithe, there the plaintiff shall not have any costs. *Buller's Nisi Pr. 8vo. ed.* 333.

For the jury may consider the costs, so as to give damages accordingly. 2 *Hawk.* c. 26. *s.* 57.

Against the plaintiff.

By 18 Eliz. c. 5, *if any informer, or plaintiff, on a penal statute, shall willingly delay his suit, or shall discontinue, or be nonsuit* *, *or have the trial or matter passed against him, therein by verdict or judgment of law, then he shall pay unto the defendant his costs.* s. 3.

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* And the court will not stay proceedings in a qui tam action till costs on a *non pros.* in a former action, by a different plaintiff, against the same defendant, be paid, because he may, if he please, pursue the costs of the former action, 322.

This statute extends only to common informers, who are to have the benefit of the penalty, and not where the penalty, or part of it, is given to the party grieved. *Salkeld* 30. *Bull. Nisi Pri. 8vo. ed.* 334.

And all prosecutors *qui tam* are looked upon as common informers. 2 *Leon.* 116. *Salk.* 30.

Yet if a party grieved brings his action, and such action be for any offence or wrong personal, immediately supposed to be done to the plaintiff, or whatsoever the nature of the action may be, if the plaintiff might have costs in case judgment should be given for him, he shall pay them on a nonsuit or verdict against them. 2 *Hawk. c.* 26. *s.* 59.

## *VIII. How the defendant may plead.*

The court will not quash an information upon motion, but the party must either plead, demur, or move in arrest of judgment. *Salk.* 372. 2 *Strange*, 953.

Neither will the court quash an information filed *ex officio* by the attorney-general, although the application is made on the behalf of the crown, for the attorney-general may stop the proceedings upon it by *noli prosequi.* 1 *Doug. 8vo. ed.* 239.

Whenever any action is founded on a penal statute, not guilty, or *nil debet*, are good pleas. *Hobart*, 218.

And the defendant must answer to the whole time laid in the information or action; and if he have any special matter for his excuse or justification, he must set it forth, with all convenient certainty: and if he plead the general issue to the whole, he must depend upon it, and not together with it plead also a special plea, either to the whole or part of the charge; for a defendant cannot plead double in *qui tam.* 2 *Hawk. c.* 26. *s.* 62. 2 *Strange*, 1044. *Barnard, K. B.* 17.

Pleading a prior suit depending.

Whenever any suit on a penal statute may be said to be actually depending, it may be pleaded in abatement of a subsequent prosecution, being expressly averred to be for the same offence. 2 *Hawk. c.* 26. *s.* 63.

And if two informations be exhibited on the very same day it seems that they mutually abate one another, because there is no priority to attach the right of the suit in one informer more than in the other. 2 *Hawk. c.* 26. *s.* 63.

Pleading a pardon, release, or former recovery.

Notwithstanding the king has such an interest in every penal statute, that he may proceed in a suit brought upon it by a common informer, after the death, release, or nonsuit of such informer, hanging the prosecution; and may also totally prevent any such suit, by first sueing for the whole penalty himself; or may totally bar it by pardon, or release, precedent to its commencement; yet if it be actually commenced before any suit by the king, the informer hath such an interest in the part of the penalty assigned to him by the statute, that the

king can no way discharge or suspend the suit, as to such part. 2 *Hawk. c.* 26. *s.* 64.

Also a conviction or acquittal *bonâ fide*, in any action or information on a penal statute, whether by the party grieved, or a common informer, or a release *bonâ fide* from the party grieved, or common informer, after such a conviction, hath always been a good bar of any subsequent prosecution for the same offence*. 2 *Hawk. c.* 26. *s.* 64.

But to prevent collusive recoveries it is enacted, by 4 *Hen.* 7. c. 20, *that if any person sue with good faith any action popular, and the defendant plead a recovery by a former action, the plaintiff may aver, that such recovery were by covin; and if such collusion or covin be found the plaintiff shall recover, as though no such action before had been had: and if the defendant shall be convicted of such collusion, he shall be imprisoned two years, by process of capias and outlawry; and that as well at the king's suit, as of every other.*

*And no release of any common person, to any such party, whether before or after any action popular, or indictment of the same, commenced or made hanging the said action shall be any wise available to surcease the said action, indictment, process, or execution.* Ibid.

It is said, that if a recovery in a former suit be pleaded in bar of any popular action, the plaintiff may, by reason of the express words of the statute, aver, that such recovery was by covin, without showing wherein the covin consisted. But otherwise, such a general pleading would be vicious. 2 *Hawk. c.* 26. *s.* 65.

And the record of the former recovery cannot be given in evidence upon the general issue; but it must be specially pleaded; and then the plaintiff may reply that there is no such record, or that it was a recovery by fraud to defeat a real prosecutor; which the plaintiff could not be prepared to show upon the general issue. 1 *Strange*, 701.

If the defendant plead the general issue, it is safest to say that he owes nothing to the informer, nor to the king. 2 *Hawk. c.* 26. *s.* 66. The general issue.

And if there be more than one defendant, they ought not to plead jointly that they are not guilty, but severally, that neither they nor any of them are guilty. 2 *Hawk. c.* 26. *s.* 67.

And it is enacted, by 21 Jac. 1. c. 4, *that if any information, suit, or action, shall be brought against any person, for any offence against any penal law, either on the behalf of the*

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* But the plea must state, that the plaintiff, in the other action, had priority of suit, or on demurrer, it will be bad. 2 *Strange*, 1169.

*king, or on the behalf of the king; and any other such defendant may plead the general issue, that he is not guilty, or that he owes nothing, and give the special matter in evidence, which shall be as available as if it had been pleaded in bar.* s. 4.

Paying money into court.

And the court will on motion give the defendant liberty to pay the penalty into court with costs. *Bull. Nisi Pri.* 197.

### *IX. Whether the penalty of a penal statute may be compounded.*

By 18 Eliz. c. 5, (which extends only to common informers, *Bull. Nisi Pri. 8vo. ed.* 196) *no informer shall compound or agree with the defendant, but after answer made in court; nor after answer, but by the order or consent of the court; on pain of being set in the pillory, in some market town next adjoining, in open market, for two hours, and of being disabled to be informer on any penal statute, and also of forfeiting 10l. half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information: and the justices of assize, and justices of the peace in sessions, may hear and determine all offences against this act.* s. 4.

The above statute extends as well to subsequent penal statutes, as to those which were in being when it was made. *Hutton*, 35.

Also it extends to the compounding of suits commenced in courts which have no jurisdiction, as much as if they had a jurisdiction. 2 *Hawk.* c. 26. s. 79.

*Ingrossing.* See Forestalling.

*Inns and Innkeepers.* See Alehouses.

*Inquisition.* See Coroner—Indictments.

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## INROLMENT OF DEEDS.

By 27 *Hen.* 8. c. 16, no lands or hereditaments shall pass whereby any state of inheritance or freehold shall be made, or any use thereof, by reason only of any bargain and sale, except the bargain and sale be made by writing indented and inrolled in one of the king's courts of record at *Westminster*, or within the county where the lands lie, or before the *custos*

*rotulorum* and two justices of peace, and the clerk of the peace of the county, or two of them, whereof the clerk of the peace to be one: and the same inrolment to be made within six months after the date of the writings, the *custos rotulorum*, or justices of the peace, and clerk, taking for the inrolment, where the land exceeds not the yearly value of 40*s.* 2*s.* *viz.* 12*d.* to the justices and 12*d.* to the clerk; and for the inrolment of such writing wherein the land comprised exceeds 40*s.* in yearly value 5*s.* and the clerk of the peace shall inrol the deeds, and the rolls thereof at the end of every year shall deliver unto the *custos rotulorum*, to remain in his custody amongst other records of the counties.

And by 5 *Eliz.* c. 26, all such inrolments in the counties of *Lancaster*, *Chester*, and *Durham*, within six months, (*viz.* in the chancery or before the justices of assize at *Lancaster*, for lands in the county of *Lancaster*; in the court of exchequer or before the justices of assize at *Chester*, for lands in the county of *Chester*; or in the court of chancery, or before the justices of assize at *Durham*, for lands in that county,) shall be as valid as if inrolled at *Westminster*.

But the acts shall not extend to lands within any city, borough, or town corporate, wherein the mayors, recorders or other officers have authority to inroll deeds. 27 *Hen.* 8. c. 16. s. 2. 5 *Eliz.* c. 26. s. 2.

*Insolvent Debtors.* See GAOLS, &c.

*Insurrection.* See RIOTS.

*Iron and Steel*,—seducing Manufacturers in, to go out of England. See MANUFACTURES, &c.

*Iron and Steel*, exporting Tools. See SMUGGLING, Head ii. *s.* 2.

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## JUDGMENT.

IT seems to be generally agreed, that a man can no other way be attainted of treason or felony at this day but only by judgment by express sentence, or by outlawry. 2 *Hawk.* c. 48. *s.* 25.

And of judgments by express sentence there are two kinds. *First*, such as are fixed and stated and always the same for the same species of crimes; *secondly*, such as are discretionary and variable, according to the different circumstances of each case. 2 *Hawk.* c. 48. *s.* 1. Judgment by express sentence.

And in fixed and stated judgments, the law makes no difference between a peer and a commoner, or between a common or ordinary case, and one attended with extraordinary circumstances.* 2 *Hawk. c.* 48. *s.* 2.

In high treason not relating to the coin.

1. *As to fixed and stated judgments.*] The settled judgment at this day against a man for high treason, not relating to the coin, seems to be, that he shall be carried back to the place from whence he came, and from thence be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out, and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure. 2 *Hawk.* c. 48. *s.* 3.

In high treason relating to the coin.

And the proper judgment against a man for high treason in counterfeiting the king's coin or seal, is, that he shall be drawn to the place of execution, and there hanged by the neck till he be dead. 2 *Hawk. c.* 48. *s.* 4.

In petit treason.

The judgment against a man for petit treason is the same with that for counterfeiting the coin; namely, that he shall be drawn to the place of execution, and there hanged by the neck till he be dead. 2 *Hawk. c.* 41. *s.* 5.

And till very lately the judgment against a woman in all cases of treason, whether high or petit treason, was, that she should be drawn to the place of execution and there burnt. 2 *Hawk. c.* 48. *s.* 6. But this is now altered by 30 *Geo.* 3. *c.* 48, which enacts, that in all cases of conviction of any woman for high or petit treason, the judgment shall be, that she shall be drawn and hanged and not burned; and if any woman is convicted of petit treason, she shall be liable to such further penalties as are directed by stat. 25 *Geo.* 2. *c.* 37, to be given upon persons convicted of wilful murder.

In felony.

The judgment against a man or woman in all cases of felony hath always been, that he or she be hanged by the neck till dead †. 2 *Hawk. c.* 48. *s.* 7. 2 *Hale's Hist.* 399.

*In præmunire.*

Judgment in *præmunire*, at the suit of the king against the defendant, being in prison, is, that he shall be out of the king's protection; and that his lands and tenements, goods, and chattels shall be forfeited to the king, and that his body

* Therefore it was adjudged in *Felton's* case, who was convicted, by confession of the murder of the duke of *Buckingham*, that the court could not order his hands to be cut off, nor make it part of the sentence that his body should be hanged in chains; but that the body after execution being at the king' disposal, might be hanged in chains, or otherwise ordered as the king should think fit. 2 *Hawk. c.* 48. *s.* 2.

† For the super-additions to the usual sentence of death in the case of wilful murder, see title Homicide, div. *Murder*.

shall remain in prison at the king's pleasure; but if the defendant be condemned upon his default in not appearing, whether at the suit of the king or party, the same judgment shall be given as to the being out of the king's protection, and the forfeiture; but instead of the clause that the body shall remain in prison there shall be an award of a *capiatur*. 2 *Hawk.* c. 48, *s.* 9.

Misprision of treason.

The judgment against a man for misprision of treason is, that he shall be imprisoned during his life, and forfeit all his goods and the profits of his lands during his life. 2 *Hawk.* c. 48. *s.* 1.

Standing mute.

And it is enacted by statute 12 *Geo.* 3. c. 20, that every person who being arraigned for felony or piracy, shall stand mute *, or not answer directly to the offence, shall be convicted of the same; and the same judgment and execution (with all their consequences in every respect) shall be thereupon awarded, as if the person had been convicted by verdict or confession of the crime.

Judgment by particular statutes.

And by many statutes peculiar punishments are appointed for several offences, as pillory, whipping, stocks, imprisonment, and the like; and in all these cases no room is left for the justices' discretion, for they ought to give judgment, and to inflict the punishment in all the circumstances thereof, as such statutes do direct. *Dalton*, c. 188.

In homicide *se defendendo*, or by misadventure.

On a conviction of homicide *se defendendo*, or by misadventure, no judgment at all is to be given, but the party let to mainprise in order to purchase his pardon. 2 *Hawk.* c. 48. *s.* 1.

In less enormous offences.

*As to judgments by express sentence which are discretionary and variable.*] *Hawkins* observes in general, that for crimes of an infamous nature, such as petit larceny†, perjury, or forgery at common law, gross cheats, conspiracy not requiring a villainous judgment ‡, keeping a bawdy-house, bribing witnesses to stifle their evidence, and offences of the like nature against the first principles of natural justice and common honesty, seems to be in a great measure left to the prudence of the court, to inflict such corporal punishment, and also such fine and binding to the good behaviour for a certain time, as shall seem most proper and adequate to the offence, from the consideration of the baseness, enormity, and dangerous tendency of it, the malice, deliberation, and wilfulness, or the inconsideration, suddenness, and surprize, with which it was committed, the age, quality, and degree of the offender, and all other circumstances which may

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* See this subject fully treated of under title MUTE.

† Petit larceny is punishable by imprisonment, or whipping at common law; or by stat. 4 *Geo.* 1. *c.* 11, by transportation for seven years. See vol. 2. p. 362.

‡ For this judgment see vol. i. p. 534.

any way aggravate or extenuate the guilt. 2 *Hawk. c.* 48. *s.* 17.

And where upon an indictment an act is charged to have been committed *feloniously*, and the jury find a verdict of guilty, though the charge as laid, does not amount to felony, yet if it does amount in law to a misdemeanour, the court will pronounce judgment as for that offence. *Rex* v. *Scolefield, Caldicot's Cases*, 397.

Judgment when defendant is absent.

But it is to be observed, that the court may assess a fine, but cannot award any corporal punishment against a defendant, unless he be actually present in court. 2 *Hawk. c.* 48. *s.* 17.

Defendant present must be committed.

Where a defendant is brought up for judgment after a conviction upon an information, he must stand committed by the court pending the consideration of the judgment, unless the prosecutor consents to his standing out on bail. 1 *East's Rep.* 159.

When there are several defendants.

And when there are several defendants a joint award of one fine against them all is erroneous, for it ought to be several against each defendant; for otherwise one who hath paid his proportionable part might be continued in prison, till all the others have also paid theirs, which would be in effect to punish him for the offence of another. 2 *Hawk. c.* 48. *s.* 18.

Fine and ransom.

It seems according to *Coke*, that where a man is to make *fine and ransom*, this, in legal understanding, is to be taken as one and the same thing under different names; called a *fine*, because it makes an end of the business, and a *ransom*, because it redeems from imprisonment; for if they were different things it would follow, that where the books say, that a man shall make a fine and ransom, they must be taken to intend that he ought to pay two different sums of which there is no precedent. *Coke Litt.* 127.

Mitigation of fine.

A fine is under the power of the court, during the term of which it is set, and may be mitigated as shall be thought proper, but after the term it admits of no alteration. 2 *Hawk. c.* 48. *s.* 20.

Moving in arrest of judgment.

By the course of the court of *King's Bench*, upon every conviction in that court of a crime capital or not capital whether by verdict or confession, the party is to have four days to move in arrest of judgment, if there be so many days remaining of the term; and if not then the longest time that can be had in the term. 2 *Hawk. c.* 48. *s.* 1.

Outlawry.

*As to judgment of* Outlawry.] This judgment is given by the coroner at the fifth county court, upon the party not appearing to the exigent, which is a writ commanding the sheriff to cause the defendant to be demanded from county court to county court, until he be outlawed. 2 *Hawk. c.* 48. *s.* 21.

And it seems agreed, that when a judgment of outlawry for treason or felony appears of record, by the sheriff's return of the exigent; and it hath been holden, that if it appears not by such

return, but only by the coroner's return of a *certiorari*, to them directed, to certify whether the party were outlawed or not: the party is as much attainted, and shall forfeit and lose as much as if sentence had been given against him upon verdict or confession. 2 *Hawk. c.* 48. *s.* 22.

But if such outlawry appear to the court to be erroneous, whereof any one as *amicus curiæ*, may inform them, the party shall have counsel assigned him to take advantage of the error; but if he will neither bring a writ of error, nor plead in convenient time, and the outlawry be voidable only and not void, the proper execution thall be awarded against him, but no sentence pronounced, because the outlawry is a judgment, and no man shall have two judgments for one offence. 2 *Hawk. c.* 48. *s.* 23.

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# JURIES.

THE trial *per pais*, or by a jury of one's country, is justly esteemed one of the greatest excellencies of our constitution; and Sir *William Blackstone* * observes that it is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals.

This great privilege at common law we find expressly confirmed by *Mag. Chart.* 9 *Hen.* 3. *c.* 29, in the following words; *No freeman shall be taken, or imprisoned,* or be *disseised of his freehold or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by the lawful judgment of his peers, or by the law of the land.*

The antiquity of this trial, and its being peculiar to us have been taken notice of as matters which reflect honour on our constitution: and though there were anciently several other methods of trial, such as by battle, ordeal, and the like, yet have they, from the inconveniences attending them, been laid aside, and this alone cultivated and improved, as the best method of investigating the truth. 3 *Bac. Abr. tit. Juries.*

*I. Grand jurors.*

*II. Other jurors.*

*III. Persons exempted from serving on juries.*

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* 3 *Black. Com.* 379.

*IV. Concerning the jury process, and manner of convening the jury.*

*V. Concerning the challenge of jurors.*

*IV. How jurors are to be impanelled and sworn.*

*VII. How to be kept and discharged.*

*VIII. For what misdemeanors punishable.*

### *1. Grand Jurors.*

Number. Juries are distinguished into grand and petit juries; and the grand jury may consist of thirteen or more; for these being the grand inquisitors of the county, every indictment and presentment by them must be found by twelve at least; but it is not necessary that all above that number should concur in such presentment or indictment. 3 *Bacon's Abr.* 232.

How returned. Upon the summons of any session of the peace, and in cases of commissions of oyer and terminer and gaol delivery, there goes out a precept either in the name of the king, or of two or more justices, directed to the sheriff, upon which he is to return twenty-four, or more, out of the whole county; namely, a considerable number out of every hundred, out of which the grand inquest at the sessions of the peace, oyer and terminer, or gaol delivery, are taken, and sworn for our lord the king, and for the body of the county. 2 *Hale's Hist.* 154.

But the officer cannot properly swear more than twenty-three grand jurors; for if a number amounting to two full juries or more should be sworn, it might happen that a complete jury of twelve might find a bill to be true, though other twelve or more of the same jury might reject it as untrue; which would be inconvenient and absurd. 2 *Burrows*, 1088.

How qualified. And by 11 *Hen.* 4. c. 9, *no indictment shall be made but by inquests of lawful people returned by the sheriffs or bailiffs of franchises, without any denomination before hand made by any person, except by the officers according to law; and if any indictment be made to the contrary, the same shall be void.*

Those returned to serve on the jury must therefore be *good and lawful men*, and ought to be of the same county where the crime was committed; and therefore it is a good exception at common law, to one returned on a grand jury, that he is an alien or

villein, or that he is outlawed for a crime, or that he was not returned by the proper officer, or that he was returned at the instance of the prosecutor; but these exceptions must be taken before the indictment is found. 3 *Bacon's Abr.* 232, 233.

They must also be freeholders, but to what amount in general * is uncertain, which seems to be *casus omissus*, and as proper to be supplied by the legislature as the qualifications of the petit jury, which were formerly equally vague and uncertain, but are now settled by several acts of parliament. 1 *Hale's Hist.* 155. 4 *Black. Com.* 302.

However, they are usually gentlemen of the best figure in the county. 4 *Black. Com.* 302.

Duration of the service of grand jurors.

The grand inquest returned the first day of the sessions and sworn, commonly serves the whole sessions of the peace, oyer and terminer, or gaol delivery; yet the court may command another grand inquest to be returned and sworn, which is done ordinarily upon two occasions. 2 *Hale's Hist.* 156.

1. If before the end of the sessions the grand jury, having brought in all their bills, are discharged by the court, and after that discharge either some new felony or other misdemeanor is committed, and the party taken and brought into gaol; or if after the discharge of the grand inquest some offender be taken and brought in during the sessions. In the former case there is a necessity to make a special record of the adjournment of the sessions from day to day, because otherwise the whole sessions are in supposition of law only the first day; and therefore without the entry of such adjournment the offence and proceedings will be in supposition of law after the sessions ended, and so the proceeding will be erroneous: and the same is to be observed, if upon record it appears that the grand inquest was returned after the first day of the sessions, unless an adjournment be entered of record. 2 *Hale's Hist.* 155.

2. The second ordinary instance of a new grand jury returned is upon the statute of 3 *Hen.* 7. *c.* 1, † namely, a grand inquest impannelled to inquire of the concealment of another grand inquest, upon which defaults presented the former grand inquest is to be amerced; and this, though it mention

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* By 7 *Will.* 3. *c.* 32. *s.* 8, they ought in *Yorkshire* to have each person fourscore pounds land per ann.

† Whereby it is enacted, " That the justices of the peace of every " shire may take an inquest, whereof every man shall have lands and " tenements to the yearly value of 40s. to inquire of the concealments " of other inquests taken afore them, and upon other such matters " as are to be inquired and presented afore justices of peace, whereof " complaint shall be made by bill: and if any such concealment be " found of any inquest within the year afore, every person of the same " inquest is to be amerced for the same concealments by discretion of " the same justices in sessions." *s.* 1.

only an inquest thus to be taken by justices of peace, yet it extends to the *King's Bench*, and hath been practised there accordingly, and possibly at the sessions of oyer and terminer, and gaol delivery, though that can rarely come in question, because the sessions of the peace ordinarily accompanies those commissions. 2 *Hale's Hist.* 156, 157.

And this is the proper and legal way of punishing the grand inquest if they refuse to present such things as are within their charge, and for which they have probable evidence to make a presentment. 2 *Hale's Hist.* 157.

## II. *Other jurors.*

Coroner's jury. By the statute of 4 *Ed.* 1, *de officio coronatoris*, the coroner is to issue his precept * to four, five, or six vills to appear before him at a certain day to make inquiry; but it does not appear that any qualification by estate is required by any statute. 2 *Hale's Hist.* 152.

Jury in sheriff's torn. By the statute of 1 *Ric.* 3. *c.* 4, no person shall be returned upon a panel, in the sheriff's torn, unless he hath 20*s.* per ann. of freehold, or 26*s.* 8*d.* of copyhold.

The leet. And it is said, in some books, that any person happening to be present at a court leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the precincts of the leet or not: by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. 2 *Hawk. c.* 10. *s.* 67.

In towns corporate. By 23 *Hen.* 8. *c.* 13, in towns corporate, trials of felons shall be by men worth 40*l.* in goods though they have no freehold.

Therefore it is no challenge when the jury are of a town corporate, that they are not freeholders. 3 *Salk.* 81.

*Per medietatem linguæ.* It is enacted by 28 *Ed.* 3. *c.* 13, that in inquests to be taken amongst aliens and denizens, as well before the mayor of the staple, as before any other justices, one half of the inquest shall be denizens, and the other half aliens, if so many there be in the place who are not parties; if not, then so many as there are. *s.* 2.

And by 27 *Ed.* 3. *st.* 2. *c.* 8, before the mayor of the staple, if both parties be strangers, the inquest shall be taken by strangers; if both be denizens, by denizens; if the one party be denizen and the other alien, half of the jury shall be denizens, and half aliens.

And by 8 *Hen.* 6. *c.* 29, the statute requiring jurors to have a certain qualification shall be no wise prejudicial to the stat. 28 *Ed.* 3, nor extend itself but only to the inquests to be taken between denizen and denizen.

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* See Title Coroner.

But it seems that the English half of the jury ought to have estates of the same value as in other cases. 2 *Hawk. c.* 43. *s.* 35.

And this privilege has always been allowed since these statutes in all pleas, and before all justices if demanded. *Dyer*, 144.

But it seems agreed that there is no need that any of those who find an indictment against an alien should be aliens. 2 *Hawk. c.* 43. *s.* 36.

And by 13 and 14 *Car.* 2. *c.* 11. *s.* 11, in actions concerning tonnage and poundage, or ships or goods to be forfeited by reason of unlawful importation or exportation, there shall not be any party jury, but such only as are natural born subjects.

On inquisitions of forcible entry.

By 8 *Hen.* 6. *c.* 9, jurors to inquire of forcible entry or detainer shall have lands or tenements of 40*s.* a year.

Riots.

And by 19 *Hen.* 7. *c.* 13, jurors to inquire of riots shall have 20*s.* a year of charter land, or freehold ; or 26*s.* 8*d.* copyhold.

In the courts at Westminster.

By 3 *Geo.* 2. *c.* 25, in the courts at *Westminster*, and city of *London*, the jurors are to be householders within the city, and have lands, tenements, or personal estates, to the value of 100*l.* *s.* 19, 20.

And the sheriffs or other officers shall not return any person to serve on a jury for the trial of any capital offence, who would not be qualified to serve as a juror in civil causes. *s.* 20.

And by 4 *Geo.* 2. *c.* 7, all leaseholders in the county of *Middlesex*, upon leases where the improved rents shall amount to 50*l.* per ann. over and above the ground rents, or other reservations, shall be liable to serve on juries. *s.* 3.

At the assizes or sessions.

By 4 *Will.* and *Mary*, *c.* 24, all jurors (other than strangers upon trials *per medietatem linguæ*) to be returned for trials of issues joined before justices of assize or nisi prius, oyer and terminer, gaol delivery, or quarter sessions, in any county of *England*, shall have within the county 10*l.* by the year of freehold or copyhold, or ancient demesne, or in rents, in fee simple, fee tail, or for life ; and in every county of *Wales*, every such juror shall have 6*l.* by the year as aforesaid ; and if any of a lesser estate be returned he may be discharged upon challenge or on his own oath. *s.* 15.

And by 3 *Geo.* 2. *c.* 25, persons having an estate in possession in land in their own right, of 20*l.* a year above the reserved rent, being held by lease for 500 years or more, or for 99 years, or any other term, determinable on one or more lives, shall be liable to serve on juries. *s.* 18.

In Yorkshire.

But by 1 *Anne*, *st.* 2. *c.* 13, no person having such estate as will qualify him to serve on juries, of the yearly value of 150*l.* or more, shall be returned to serve upon any jury at any session

of the peace for any part of the county of of *York*, upon pain of 20*l*. to be recovered for the use of the informer in any court of record at *Westminster* by action. *s*. 3.

And by 10 *Anne*, *c*. 14, If any such person shall serve as a juror at any of the said sessions, he shall not be thereby exempted from serving at the assizes for the county of *York*. *s*. 6.

When women are to form a jury.

Where a woman alleges pregnancy to prevent the award of execution, the sheriff or marshal shall be commanded to take her into a private room, and to impannel a jury of matrons to try and examine whether she be quick with child or not. 2 *Hawk*. *c*. 51. *s*. 9.

So upon the writ *de ventre inspiciendo* * there shall be a jury of women, to try if a woman be *ensient*. *Tri. per Pais*, 86.

### III. *Persons exempted from serving on juries.*

Officers of the courts at Westminster.

It seems to be agreed, that all persons whose attendance is required in the superior courts of justice, such as serjeants at law, counsellors, attornies, and other officers of the courts, are so far privileged as not to be summoned on juries:—all peers of the realm are also excluded, for they are not *pares patriæ*, but *pares* of an higher rank; and therefore if a peer be returned on a jury, and bring a writ of privilege, he shall be discharged; and it seems that even without such a writ he may challenge himself, or be challenged by either party. *Dyer*, 314. *Moor*, 167. 2 *Roll. Abr*. 646. *Co. Lit*. 157. 9 *Co*. 49. 6 *Co*. 53. 1 *Jones*, 153.

Peers.

Members of parliament.

But members of the house of commons seem not to have any privilege to be exempt from serving on juries: however, in the case of Sir *Edward Bainton*, who was returned on a jury in *B. R.* the court would not force him to be sworn against his will, he being a parliament man, and the parliament then sitting. 3 *Bacon's Abr*. 260.

Tenants in an ancient demesne.

Tenants in ancient demesne are not to be impannelled to appear at *Westminster*, or elsewhere in any other court out of their manors, upon any inquest or trial of any cause. 4 *Inst*. 269.

Immemorial custom.

So if the inhabitants of an hundred have enjoyed an immemorial exemption from serving on juries out of the hundred, they are not liable to be summoned, under any of the differ-

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* This is a writ which the heir presumptive may have to examine whether a widow who is suspected to feign herself with child, in order to produce a supposititious heir, be with child or not, and if she be to keep her under proper restraint till delivered; but if the widow be, upon due examination, found not pregnant, the presumptive heir shall be admitted to the inheritance. 1 *Black. Com*. 456.

ent statutes relative to jurors; for such statutes, being affirmative, do not take away the prior exemption. 1 *Doug.* 8*vo.* *ed.* 190.

And it seems agreed, that the king by his grant or charter may exempt one, two, or more, from serving on juries; but he cannot exempt a whole county or hundred, because in such case there would be a failure of justice. 3 *Bacon's Abr.* 260. by charter.

But by 52 *Hen.* 3. *c.* 14, they who have charters of exemption from being impanelled in assizes, juries, and inquests, if their oaths be so requisite that without them justice cannot be ministered, they shall be compelled to swear, saving to them at another time their exemption.

By *stat. Westm.* 2. 13 *Ed.* 1. *c.* 38, neither old men above the age of seventy years, nor persons perpetually sick, nor those who are infirm at the time of their summons, nor those who do not reside in the county, shall be put in juries, or in the lesser assizes. Men above 70 years, or sick.

And if these are returned, though it is not a cause of challenge, they may have an action against the sheriff, without notice of the age, sickness, or non commorancy; but it is more usual to sue out a writ of privilege, *de non ponendis in assisis et juratis*, grounded on this statute. 2 *Inst.* 447. *Reg.* 1796. *Comyns's Dig. tit. Chal.* (a. 4.)

And the equity of this statute, and also the reason of the thing, seem plainly so far to extend to grand juries, that if it shall appear that any of the persons above mentioned be returned on a grand jury, the court will easily excuse their non-appearance; but it seems clear, that any such persons being returned on a grand jury, may lawfully serve upon it if they think fit. 2 *Hawk.* c. 25. *s.* 20.

So clerks or persons in holy orders are usually excused, out of favour and respect to their function; but if they have lay fees they may in strictness be impanelled on account of them, unless they be in the service of the king, or of some bishop. *Fitz. Nat. Brev.* 166. B. Clergymen.

So dissenting teachers, qualified under the toleration act, are exempted from serving on juries by 1 *Will.* and *Mary*, c. 18. *s.* 11. Dissenting teachers.

Also quakers by 7 & 8 *Will.* 3. *c.* 34. *s.* 6. Quakers.

And every minister professing the Roman catholic religion, taking and subscribing the oath of allegiance, abjuration, and declaration in the act 31 *Geo.* 3. *c.* 32, mentioned, shall in like manner be exempted from serving on any jury. 31 *Geo.* 3. *c.* 32. *s.* 8. Roman catholic priests.

By 6 & 7 *Will.* 3. *c.* 4, apothecaries within *London*, and seven miles thereof, being free of the society of apothecaries in the said city; and country apothecaries who have served seven years apprenticeship, shall for so long time as they Apothecaries.

exercise the said art, be exempted from serving on juries, and their return shall be void, unless they shall voluntarily consent to serve.

Surgeons.

And by 5 *Hen.* 8. *c.* 6. and 18 *Geo.* 2. *c.* 15, freemen of the company of surgeons in *London* are exempted from serving upon juries.

Certain public officers.

So coroners, verdurers, foresters, and other officers of the forest; officers of the army; officers on the cheque roll, as gentlemen pensioners and the like; and other officers and ministers belonging to the king, have a privilege not to be sworn on juries. *Fitz. Nat. Brev.* 166. a: 3 *Bacon's Abr.* 261. *Cases B. R. temp. Hard.* 202.

But this privilege is not to be understood as extending to persons who can only be deemed officers belonging to the king in a remote sense, such as collectors of assessed taxes and like persons *.

How privilege to be claimed.

It seems that the sheriff cannot return any privilege of exemption, but each particular juror must come in and demand it. *Tri. per Pais*, 87.

And they ought to sue out the writ of privilege, *de non ponendis in assisis et juratis*, which if the sheriff does not obey an attachment lies. *Comyns's Dig. tit. Chal.*(a. 4.) *Reg.* 181. a.

But by 4 & 5 *Will.* and *Mary*, c. 24, no writ *de non ponendis in assisis et juratis* shall be granted, unless upon oath made that the suggestions upon which it is granted are true. *s.* 21.

And if they be actually returned, and appear, they can neither be challenged by the party, nor excuse themselves from serving, if there be not a sufficient number without them. 2 *Inst.* 446. *Fitz. Nat. Brev.* 165.

## *IV. Concerning the jury process and manner of convening the jury.*

None compellable to serve without being summoned.

It seems agreed, that a person not duly summoned and returned is not obliged to serve on a jury. 3 *Bacon's Abr.* 235.

Process in civil causes.

The first process for convening the jury, in civil causes, is the *venire facias*, which must be awarded on the roll; and thereupon, in the *Common Pleas*, there issues the *habeas corpora* and *distringas juratores*; but in the *King's Bench* and *Exchequer*, after the *venire* they proceed on the distringas, for the *venire* being in the nature of a summons, if the jury did not appear thereon in those courts, in which the king

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* But if such persons make it appear that their attendance is immediately necessary in the discharge of their duty, the court may exercise its discretion, and excuse them from serving on the jury for that time.

has a more immediate concern, they proceed on the strongest progress, viz. the *distringas*. *Tri. per Pais*, 64.

And the process to bring in the jury in criminal matters is various according to those courts or judicatories wherein a prisoner is to be tried. In criminal matters.

In the *King's Bench* the *venire facias*, as all other process of that court, issues in the king's name under the seal of the court and teste of the chief justice, and ought always to bear teste after the issue joined between the king and the prisoner. *Hale's Hist.* 260. How in the Kings Bench.

But justices of gaol delivery may have a panel returned by the sheriff without any precept or writ; and the reason given for it is, that before their coming they may make a general precept to the sheriff, on parchment under their seals, *to bring before them, at the day of their sessions, twenty-four out of every hundred*, to do those things which shall be enjoined them on the part of the king; and therefore it is said that they need not make any other precept for the return of a jury, for the trial of any issue joined before them, but that their bare award that the jury shall come is sufficient, because there are enough for that purpose supposed to be present in court, whom the sheriff may return immediately, whenever the court shall require their service. 2 *Hawk. c.* 41. *s.* 1. By justices of gaol delivery.

Also it is said that a jury may be so returned before justices of peace at their sessions because the precept (I) for the summons of the sessions hath a clause to the same effect, for the summons of twenty-four out of every hundred; but it is doubted whether this matter does not rather depend on practice and the constant course of precedents, than any argument from the reason of the thing; and even in the case of justices of gaol delivery the law is otherwise, if they have a special commission. 2 *Hawk. c.* 41. *s.* 1. Before justices of peace at their sessions.

Also the precept to the sheriff from justices of oyer and terminer, in order for the holding of their sessions, hath in effect the very same clause for the bringing of twenty-four before them out of each hundred at the day of their sessions; and yet it seems agreed that they cannot have a jury returned for the trial of an issue joined before them, by force of a bare award, but ought to make a particular precept to the sheriff for that purpose under their seals. 2 *Hawk. c.* 41. s. 1. Before justices of oyer and terminer.

If a juryman be called, and, being present, refuse to appear, or, having appeared, withdraw himself before he be sworn, the court may of common right set a fine upon him at their discretion. 2 *Hale's Hist.* 309. How jurors may be compelled to appear.

But a juror who comes not to town where the court is

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(I) For the form of this precept, containing the summons of the jurors to the sessions, See title Sessions.

holden shall only lose his issue, or be amerced, but not fined. 2 *Hawk.* c. 22. s. 14.

And no sheriff shall return any juror without the addition of his dwelling, or some other addition by which he may be known; and no extract of issues shall be delivered out without such addition, on pain of five marks to the king, and five marks to the party grieved, to be recovered in sessions, or elsewhere. 27 *Eliz.* c. 7.

And by 3 *Geo.* 2. c. 25, every person whose name shall be drawn (as by the act is directed, on trials at *nisi prius*), and who shall not appear, being called three times, on oath made that such person hath been summoned, shall forfeit for every default (unless some reasonable cause of absence be proved by oath to the satisfaction of the judge) such fine, not exceeding 5*l.* nor less than 40*s.* as the judge shall think reasonable *. *s.* 13.

And if the clerk of assize, associate, or other officer, shall record the appearance of any person who did not appear, the judge of assize shall, on examination in a summary way, set such fine upon him for every person whose appearance shall be so falsely recorded, as the said judge shall think meet, not exceeding 10*l.* nor less than 40*s.* *s.* 3.

And it hath been held, that if a stranger cause himself to be sworn in the name of one who was of the jury, it is such a misdemeanor for which he may be indicted, and for which also an action on the case lies at the suit of the party injured. *March*, 81.

By whom the jury process is returnable.

The sheriff is the proper officer by whom the jury process is to be executed, unless he be partial; that is, such a one as from his consanguinity or affinity, his being under the power of either party, or the like, cannot be presumed to be an indifferent person, as every officer who hath any way to do with the administration of justice ought to be; and in every such case the process shall be directed to the coroners, if they are impartial, or to those of them who are so, in case some of them lie under

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*And by 29 *Geo.* 2. c. 29, every person duly impanelled and summoned to serve upon any jury *for the trial of any cause*, to be tried in any court of record *within the city of* London *or in any other city or town corporate, liberty, or franchise*, after being openly called three times, and oath made of his having been summoned, shall unless some just cause be made appear by oath) be fined not more than 40*s.* nor less than 20*s.* and on refusal to pay to such person whom the judge or judges shall appoint to receive the same, they shall levy the same, by warrant of distress, rendering the overplus, the reasonable charges of distress and sale being first deducted: the same to be paid to the proper officer of the place to be applied to such use as issues set on jurors, or other fines set in such courts are by charter, usage, or prescription applicable. *s.* 1, 2, 3.

the aforementioned prejudices; and in case all the coroners are partial, or not indifferent, then the *venire* shall be directed to two elizors named by the court, and against whom for that reason no challenge can be taken. *Co. Lit.* 158. a. *Bro. tit. Chal.* 153.

*And, to the end that sheriffs may be the better informed of persons fit to be returned on juries*, the justices at the quarter sessions next after 24th *June*, shall issue forth their warrants (II) under the hands and seals of two or more of them, to the high constables, requiring them to issue forth their precepts — Making and returning lists of jurors.

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(II) The Form of a Warrant for returning Lists of Jurors.

Monmouthshire. { To *H C*, yeoman, high constable of the hundred of —— within the said county.

*At the general quarter sessions of the peace of our sovereign lord the king, holden at ——, in and for the said county of ——, on ——, the —— day of ——, in the —— year of the reign of our said sovereign lord* George *the* Third, *of* Great Britain, France *and* Ireland *king, defender of the faith, and so forth, before us,* A B, C D, *and* E F, *esqrs, and others, our associates, justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county; and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed:* We *the said justices do, in pursuance of the statute in that behalf made and provided, require you the said high constable, immediately upon sight hereof, to issue forth your precepts to the respective constables, tything-men, and headboroughs within your hundred, thereby directing and requiring them, and all and every of them to make and return a true list, fair written, and signed by them, of the names and places of abode of all the persons within the respective places for which they serve, qualified to serve on juries, with their titles and additions, between the age of one-and-twenty years and seventy years: and this you the said high constable are in no wise to omit, under the penalty of* 10l.

Given under our hands and seals, the day and year first above written,

A. B.
C. D.
E. F.

Precepts to the high and petty constables to make and return lists of jurors.

(III) to the petty constables, thereby directing and requiring them to meet, together with the head constables, within fourteen days next after, at some usual place, where the petty constables shall prepare and make a true list, fair written, and signed by them, of the names and places of abode of all persons within their respective constablewicks,

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(III) The Form of the Precept from the High Constable to the Petty Constable.

Monmouthshire. { To the Constable of ——

BY VIRTUE *of a warrant from his majesty's justices of the peace in and for the said county, at their general quarter sessions assembled, unto me directed, you are hereby required to prepare and make a true list in writing, containing the names and places of abode, together with the titles and additions of all persons between the age of one-and-twenty years and seventy years, dwelling within your constablewick, qualified to serve upon juries; that is to say, of every such person who hath, in his own name, or in trust for him, within the county aforesaid, ten pounds a year above reprizes, of freehold or copyhold lands and tenements of ancient demesne, or in rents, or in all or any of them in fee-simple, fee-tail, or for the life of himself, or some other person; or having land in possession in his own right of twenty pounds a year above the reserved rent, being held by lease for five hundred years, or more, or for ninety-nine years, or any other term determinable on one or more lives; in order to the making of which list, you may, if you think it needful, apply to any parish officer who shall have in his custody any of the rates for the poor or land-tax, and from thence take the names of such persons so qualified. Which list so being made as aforesaid, you are required upon two or more* Sundays *at least, twenty days before* Michaelmas *next, to fix on the door of the church or chapel, and of every other public place of religious worship within your parish or other precinct, and leave at the same time a duplicate thereof with a churchwarden or overseer of the poor, to be perused by the parishioners* gratis. *And the said list you are also further required to deliver in at the next general quarter sessions of the peace to be holden in and for the said county in open court; or otherwise you may in the mean time apply to one of his majesty's justices of the peace in and for the said county, and in his presence subscribe the said list, and attest the truth thereof upon oath; and the same (being first also signed by the said justice) you may deliver to me, to be by me delivered in at the next quarter sessions. And this you are in no wise to omit under the penalty of* 5l. *Given under my hand at ——, in the said county, the —— day of ——, in the year of our Lord ——*

qualified to serve on juries, with their titles and additions, between the ages of 21 and 70; and any head constable failing to issue forth his precepts as aforesaid shall forfeit 10*l.* and every petty constable failing to meet the head constable, and failing to prepare and make a true list, shall forfeit 5*l.* and every such offender shall be prosecuted at the general assizes, sessions of oyer and terminer, or general gaol delivery, or sessions of the peace. 3 *and* 4 *Anne*, *c.* 18. *s.* 5.

And by 3 *Geo.* 2. *c.* 25, the petty constable shall on request to any parish officer, who shall have in his custody any of the rates for the poor, or land-tax, have liberty to inspect such rates, and take the names of such persons qualified dwelling within their precincts. *s.* 1. Petty constables may inspect parish rates.

And shall yearly, twenty days at least before *Michaelmas*, upon two *Sundays*, fix upon the door of the church, within their precincts, a list of all such persons intended to be returned to the quarter sessions, and leave a duplicate of such list with a churchwarden or overseer of the poor. *Ibid.* Lists to be put on church doors.

And if any person not qualified shall find his name mentioned in such list, and the person required to make such list shall refuse to omit him, the justices at their quarter-sessions, on satisfaction from the oath of the party complaining, or other proof, shall order his name to be struck out. *Ibid.* and persons not qualified struck out.

And if any person, required to make up such list, shall wilfully omit any such person whose name ought to be inserted, or insert any who ought to be omitted, or shall take any reward for omitting or inserting any person, he shall for every person so omitted or inserted, forfeit 20*s.* on conviction before one justice, on the confession of the offender, or proof by one witness on oath; one half to the informer, the other half to the poor of the parish; and if the penalty shall not be paid within five days, it shall be levied by distress and sale of goods, by warrant from one justice. And the justices before whom such person shall be convicted shall certify the same to the next quarter sessions, which shall direct the clerk of the peace to insert or strike out the name. 3 *Geo.* 2. *c.* 25. *s.* 2. Penalty on constable inserting names wrongfully.

Which list the said petty constables shall yearly, on pain of 5*l.* return and give to the justices in open court, upon the first day of the general quarter sessions to be holden in the week after *Michaelmas*. 3 & 4 *Anne*, *c.* 18. *s.* 5. Return of lists.

Or instead of this, it shall be sufficient for them, after they have completed the lists for their precincts, to subscribe the same in the presence of one justice, and at the same time to attest the truth of such lists, upon oath, to the best of their knowledge or belief; and the lists shall (being signed by the justices) be delivered by them to the high constables, who are to deliver in such lists to the quarter sessions, attesting upon oath the receipts of such lists from the petty constables; and that no al-

teration hath been made since their receipt thereof. 3 *Geo.* 2. *c.* 25. *s.* 7.

Lists to be entered by clerk of the peace in a book,

And the justices shall then cause the lists to be fairly entered in a book by the clerk of the peace, to be by him provided and kept for that purpose amongst the records of the sessions. 7 & 8 *Will.* 3. *c.* 32. *s.* 4.

and duplicates delivered to the sheriff.

And duplicates of the lists, when delivered at the sessions and entered by the clerk of the peace, shall, during the sessions, or within ten days after, be transmitted by the clerk of the peace to the sheriff. 3 *Geo.* 2. *c.* 25. *s.* 2.

And the sheriff shall take care that the names be entered alphabetically, with their additions and places of abode. *Ibid.*

And every clerk of the peace neglecting his duty therein, shall forfeit 20*l.* to such person who shall prosecute for the same, till the party be convicted upon an indictment at the quarter-sessions. *Ibid.*

Penalty on sheriff returning persons not named in in such lists.

And if any sheriff or officer shall summon and return any persons to serve on any jury before the justices of assize, *nisi prius*, or judges of the great sessions in *Wales*, or of the sessions for the counties palatine, whose name is not inserted in the duplicates transmitted to him by the clerk of the peace; the judge shall, upon examination in a summary way, set such fines upon him for every person so summoned and returned, and for every person whose appearance shall be so falsely recorded, as the said judge shall think meet, not exceeding 10*l.* nor less than 40*s.* 3 *Geo.* 2. *c.* 25. *s.* 3.

Time and manner of summons.

Every summons of any juror shall be made by the sheriff, his officer or lawful deputy, six days before at the least (and in Wales eight days before, and in the counties palatine 14 days before. 3 *Geo.* 2. *c.* 25. *s.* 9, 10), showing to every person so summoned the warrant under the seal of the office wherein they are appointed to serve; and in case any juror be absent from the usual place of his habitation, notice of such summons shall be given by leaving a note in writing, under the hand of such officer, containing the contents thereof, at the dwelling house of such juror, with some person there inhabiting the same. 7 & 8 *Will.* 3. *c.* 32. *s.* 5.

Penalty on sheriff or officers misbehaving.

Also if the sheriff, his bailiff, or deputy, neglect their duty herein, or excuse any person for favour or reward, he shall forfeit 20*l.* to him who shall sue. *s.* 6.

Also by 2 *Geo.* 2. *c.* 25, no sheriff or other person shall take any reward, to excuse* any person from serving on juries,

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* And where any such officer is guilty of any corrupt practice, the court will interpose in a summary way by attachment.
Thus in the case of *The K.* v. *Whitaker*, *Hil.* 18 *Geo.* 3, an attachment was granted against the defendant (who was summoning bailiff

nor shall any officer appointed to summon juries summon any person other than such whose name is specified in a mandate signed by the sheriff or under sheriff. And if any sheriff or officer shall wilfully transgress in the said cases, the judge may, on examination and proof of such offence, in a summary way, set a fine on any person so offending, not exceeding 10*l*. *s.* 6.

How often jurors liable to serve.

No person shall be returned to serve as a juror at *nisi prius* in *Middlesex*, who has been returned at *nisi prius* in the said county in the two terms or vacations next preceding. 4 *Geo.* 2. c. 7. *s.* 2.

And no persons shall be returned as jurors at any assizes or *nisi prius*, who have served within one year before in the county of *Rutland*, or four years in the county of *York* *, or within two years in any other county (except *Middlesex*, 4 *Geo.* 2. c. 7. *s.* 1.), not being a county of a city or town. 3 *Geo.* 2. c. 25. *s.* 4.

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to the sheriff of *Middlesex*, and whose province it was to summon jurors to attend to try causes), on a charge of demanding and receiving money from several of the inhabitants to excuse them from serving; and for summoning such as refused to pay him, more frequently than it came to their turn. Being examined upon interrogatories, it appeared to the court, upon the report of Sir *James Burrows*, that he admitted having received small sums from several individuals: that in some years he had received in the whole about sixty or seventy pounds, and in every year something, though sometimes not more than 20*l*. But he denied ever having demanded it, or of ever being guilty of partiality, either in excusing those who paid him, or in summoning those more frequently than he ought to have done who refused to pay him. He swore he received it only as a Christmas box, which had been customary, and in no other view whatever: and positively denied that he ever acted with any partiality in consequence of its being given or refused.—The court thought this a very bad practice, and of very evil example: wherefore they fined him 200*l*. and ordered him to be committed till paid; they added, that the sheriff should be informed of this; and that it should be recommended to him to discharge this man from his office of summoning bailiff. *Cowper*, 752.

* No person shall be summoned to serve upon any jury at the assizes or general gaol delivery to be holden for the county of *York*, or at any sessions of the peace for the said county, or any of the ridings (the city of *York*, and *Kingston upon Hull* excepted), above once in four years. 7 & 8 *Will.* 3. *c.* 32. *s.* 7. 10 *Anne*, *c.* 14. *s.* 5. And if the sheriff of the county of *York* neglect to keep such book as above, or to enter the names, or to deliver over to his successor the entries made for four years next before, or to deliver the certificates *gratis*, he shall forfeit 100l. half to the king, and half to him that shall sue. 3 & 4 *Anne*, *c.* 18. *s.* 3.

And if he shall summon or return any juror, who shall have served within four years, and shall not on producing the certificate, discharge the summons or return, and thereof give notice to the party summoned, six days before the assizes or sessions, he shall forfeit 20*l*. to the party summoned, with full costs. *s.* 4.

And if any sheriff shall wilfully transgress therein, any judge is required on examination and proof of such offence in a summary way to set a fine upon such offender, not exceeding 5*l.* 4 *Geo.* 2. *c.* 7. *s.* 2. 3 *Geo.* 2. *c.* 25. *s.* 4.

Every sheriff shall register the names of such persons as shall be summoned and serve as jurors alphabetically, and the times of their services: and every person so summoned and serving, shall, upon application to the sheriff, &c. have a certificate testifying his attendance, which the sheriff, &c. is to give without fee; and the book shall be transmitted by the sheriff, &c, to his successor. 3 *Geo.* 2. *c.* 25. *s.* 5.

And the inhabitants of the city and liberty of *Westminster* shall be exempted from serving in any jury at the sessions for *Middlesex*, by reason of their attendance at the courts of Westminster-Hall. 7 & 8 *Wil.* 3. *c.* 32. *s.* 9.

**What number are to be returned.**

Upon the grand jury, there may be, and usually are, more than twelve, as has been before observed; but upon a trial by a petit jury, it can be no more nor less than twelve, and all assenting to the verdict. 2 *Hale's Hist* 161.

Although by the words of the writ of *venire facias* the sheriff is only to return twelve, yet by ancient course he was obliged to return twenty-four; and this, says my lord *Coke*, is for expedition of justice, for if twelve should only be returned there would seldom a full jury appear; and in this case usage and custom makes the law. 2 *Hale's Hist.* 463. *Bac. Abr. tit. Jur.* (B. 6.)

The precept that issues before a sessions of gaol delivery, oyer and terminer, and of the peace, is to return twenty-four, and commonly the sheriff returns upon that precept forty-eight. 2 *Hale's Hist.* 263.

But the award or precept to try the prisoner after he hath pleaded, is only *venire facias*, twelve, and twenty-four are returned by the sheriff on that panel. 2 *Hale's Hist.* 263.

But by 2 *Geo.* 2. *c.* 25, in issues of *nisi prius*, the sheriff in *England* shall upon the return of every *venire facias* (unless in causes intended to be tried at bar, or where a special jury shall be struck by rule of court), annex a panel to the writ, containing the name, additions, and places of abode, of a competent number of jurors named in such lists, the names of the same persons to be inserted in the panel annexed to every *venire facias* for the trial of issues at the same assizes; which number of jurors shall not be less than forty-eight, nor more than seventy-two, without direction of the judges appointed to go the circuit, or one of them, by order under their hands; and the writs of *habeas corpora* or *distringas* subsequent to such *venire*, need not have inserted in the bodies of such writs the names of the persons contained in such panel: but it shall be sufficient to insert, in such writs, general words of reference, *viz.* in the mandatory part of the writ of *habeas corpora juratorum*, to use the

words, *have the bodies of the several persons named in the panel annexed to this writ*, or in the distringas, *distrain the several persons named*, &c. and to annex to such writs panels containing the names returned in the panel to the *venire*; and for making the said returns and panels, and annexing the same, no other fees shall be taken than what are now allowed. *s.* 8.

And every sheriff in *Wales* shall summon, out of every hundred and commote, not less than ten, or more than fifteen, without the direction of the judge, by rule of court. *s.* 9.

And in the counties palatine of *Chester*, *Lancaster*, or *Durham*, the sheriff shall summon, not less than forty-eight, nor more than seventy-two, without the direction of the judge; and shall eight days before the sessions, make a list of the persons so summoned; and such list shall be hung up in the sheriff's office. *s.* 10.

And in the county of *York*, only one panel of forty-eight freeholders and copyholders, and no more, shall be returned to serve on the grand inquest at the assizes; and at the sessions not above forty, either upon the grand inquest, or other service there. 7 & 8 *Will.* 3. *c.* 32.

Special juries are appointed on motion and application to the court for that purpose; and the method of striking special juries is, for the sheriff to attend the secondary or master with his book of freeholders at the time appointed by the master for that purpose, who is to give notice to their attornies on both sides to be present: the master then takes forty-eight, out of which each party strikes twelve, and the remaining twenty-four are returned: if only the attorney on one side attends, the master is to strike out the twelve for him who is absent. *Buller's Nisi Pri.* 8*vo. ed.* 304. Special juries.

And in order to prevent improper applications for special juries, it is enacted by 3 *Geo.* 2. *c.* 25, that the person who shall apply for such jury, shall pay the fees for striking it, and shall have no allowance for the same on taxation of costs. *s.* 16.

However, that being the smallest part of the expense, was found insufficient; therefore the 24 *Geo.* 2. *c.* 18, enacts, that he shall pay all the expenses of the special jury, and shall not be allowed it in costs, unless the judge immediately after the trial certify in open court, on the back of the record, that it was a cause proper to be tried by a special jury. *s.* 1.

And, in order to lessen the expense of special juries, the same act directs, that no person who shall serve upon a special jury shall take more than the sum which the judge who tries the issue thinks reasonable, not exceeding one guinea, except in causes wherein a view is directed. *s.* 2.

From the penning of the act, it appears to extend only to the trial of any issue joined, therefore the court will not grant

a special jury upon a writ of inquiry. *Buller's Nisi Pri. 8vo. ed.* 304.

But the court sometimes, on motion, makes a rule for the sheriff to summon a good jury, meaning thereby men of a superior rank or station to those commonly summoned. 3 *Bacon's Abr.* 250.

Also it is said to be contrary to the course of the court of *King's Bench* in capital cases, to order the clerk of the crown to strike a special jury, as is done by the secondary in civil causes upon trials at bar. 2 *Jones*, 222.

And on a motion for a special jury in the case of *The K. v. Macartney, Tr.* 2 *Geo.* 1. for the murder of the duke of *Hamilton*, it was held by *Parker*, Ch. J. that there cannot be a special jury in cases of treason or felony: for the party must have the advantage of challenging twenty in case of felony, and thirty-five in case of high treason, without cause shown: and as in the case of special juries the number is reduced to twenty-four, if there should be a special jury, it would take away the advantage which the party has of a peremptory challenge. 21 *Viner's Abr.* 301. *pl.* 5.

But by 2 *Geo. c.* 25, his majesty's courts of *King's Bench, Common Pleas*, and *Exchequer*, at *Westminster* (and the justices of the sessions or assizes for the counties palatine of *Chester, Lancaster*, and *Durham*, 6 *Geo.* 2. *c.* 37), upon motion made in behalf of his majesty, or on the motion of any prosecutor or defendant *in an indictment or information for any misdemeanor or information in the nature of a* quo warranto *in the* King's Bench, *or in an information in the* Exchequer, *or on motion of any plaintiff or defendant in any cause depending in the said courts*, are required to order a jury to be struck before the proper officer for the trial of any issue, in such manner as special juries are usually struck in such courts upon trials at bar. *s.* 15.

And where a special jury shall be ordered by rule of court in any cause arising in any county of a city or town, the sheriff shall be ordered by such rule to bring the books of persons qualified to serve on juries within the same, in like manner as the freeholder's book hath been usually ordered to be brought in order to the striking of juries for trials at bar, and the jury shall be struck out of such books. *s.* 17.

Where a view may be had.

A view is grantable in such cases where the title is in question; and in such cases it may be granted on motion, on a bare suggestion, without any affidavit. 2 *Salk.* 665.

And to this purpose it is enacted by 4 & 5 *Anne*, c. 16, that in any actions brought in the courts at *Westminster*, when it shall appear to the court, that it is necessary that the jurors shall have the view of the place in question, they may order special writs of *distringas* or *habeas corpora* to issue, by which the sheriff shall be commanded to have six out of the first twelve of the jurors, or some greater number of them, at the place in

question, some convenient time before the trial, who shall have the matters in question shown to them by two persons in the said writs named; and the sheriff by a special return upon the same, shall certify that the view hath been had according to the command of the said writ. *s.* 8.

And by 3 *Geo.* 2. *c.* 25, where a view shall be allowed, six of the jurors or more (who shall be consented to on both sides, or (if they cannot agree) who shall be named by the proper officer of the court; or, if need be, by a judge, or by the judge before whom the cause shall be brought on to trial) shall have the view, and shall be first sworn, or such of them as appear on the jury before any drawing; and so many only shall be drawn to be added to the viewers as shall make up the number of twelve. *s.* 14.

But the usual way of granting views now is in the parties entering into a rule by consent, that in case no view be had (as if no jurors attend), or if a view be had by any of the jurors whomsoever, (though not being six of the first twelve) yet the trial shall proceed, and no objection be made on account thereof, or for want of a proper return. 1 *Burrows*, 256.

Tales de circumstantibus.

When a full jury at nisi prius (or on indictments, informations, or other actions on penal statutes, 4 & 5 *Will. & Mar.* c. 7) shall not appear, or shall be reduced below the number by challenge, the judges, on request of the plaintiff, (or defendant 14 *Eliz. c.* 9.) may command the sheriff to appoint so many other able persons of the county present at the assizes, as shall make up a full jury, whose names shall be annexed to the panel. 35 *Hen.* 8. *c.* 6. *s.* 6.

Which talesmen shall have each 5*l.* a year of like estate as other jurors: in *Wales* 3*l.* 4 & 5 *Wil. & Mary*, *c.* 24. *s.* 18, 19.

And the talesmen in *nisi prius* shall be returned out of the other panels * returned to serve at the same assizes. 7 & 8 *Wil.* 3. *c.* 32. *s.* 3.

And the parties may have their challenges to the tales as to other jurors. 35 *Hen.* 8. *c.* 6. *s.* 7.

And if such talesmen, after they be called, be present and do not appear, or after appearance do wilfully withdraw themselves, the judges may fine them; which shall be levied as issues forfeited by jurors for default of their appearance at common law have been accustomed to be levied. *s.* 9.

And no fee shall be taken by any sheriff, clerk of assize, or any other person, for the return of any tales, or upon the account of any tales returned, on pain of 10*l.* half to the prosecutor, and half to the king. 4 & 5 *Will. & Mar. c.* 24. *s.* 20.

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* Before the statute of 3 *Geo.* 2, the sheriff used to return *a separate jury in every cause*, but as that act, s. 8. (see p. 90. supra) ordains that he shall return *only one panel* for the trial of all causes—this clause of 7 & 8 *Wil.* 3. *c.* 32, is now disregarded.

But it is to be observed that in indictments and informations, neither the prosecutor nor the defendant can pray a tales without a warrant from the attorney general. 1 *Levinz.* 223. 6 *Mod.* 246. *Buller's Nisi Pri. 8vo. ed.* 305.

Having now brought the jury to the bar, the next thing to be looked into is the doctrine of challenges. *Buller's Nisi Pri. 8vo. ed.* 306.

And this will be the subject of inquiry in the ensuing division of this title.

### *V. Concerning the challenge of jurors.*

When the trial is called on, the jurors are to be sworn as they appear, unless they are *challenged.* 3 *Black. Com.* 358. 4 *Black. Com.* 352.

And challenges are of two kinds, viz. either to the *array* *, or to the *polls* †. *Co. Lit.* 156. *Buller's Nisi Prius*, 8vo. *ed.* 306.

**Challenges to the array.** Challenges to the *array* are at once an exception to the whole panel, in which the jury are arrayed or set in order by the sheriff in his return. 3 *Black. Com.* 359.

And this kind of challenge is two-fold, either a principal cause of challenge, or to the favour. *Co. Lit.* 156.

**Principal challenge to the array.** A principal ‡ cause of challenge is grounded on such a manifest presumption of partiality, that if it be found true it unquestionably sets aside the array or the juror. *Co. Lit.* 156.

And there are many principal causes of challenge to the array, viz. if the sheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue ;—if the officer return any juror at the denomination of either party, the whole array shall be quashed. If the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party, this is a good cause of challenge. So if the plaintiff or defendant have an action of debt against the sheriff. *Co. Lit.* 156.

So if the sheriff have parcel of the land depending upon the same title ;—or if the sheriff or his bailiff which returned the jury be under the distress of either party ;—or if the sheriff or his bailiff be either of counsel, attorney, officer, or servant of either party, or arbitrator in the same matter, the array may be well challenged. *Co. Lit.* 156.

So if a sheriff return the jury to try an indictment in which

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* By the *array* is meant the whole jury as it stands *arrayed* in the *panel*, or little square *pane* of parchment on which the jurors names are written. *Co. Lit.* 156.

† By the *polls* is meant the several particular persons or heads in the array. *Co. Lit.* 157.

‡ A principal challenge is so called, because, if it be found true, it standeth sufficient of itself, without leaving any thing to the conscience or discretion of the triers. *Co. Lit.* 156. b. (p.)

he is prosecutor, the array may be well challenged; but this is an objection which must be made by way of challenge, and cannot be moved in arrest of judgment. *Conrad Sheppard's case, Leach's Cr. L.* 105.

And where a subject may challenge the array for unindifferency, there the king, being a party, may also challenge for the same cause. *Co. Lit.* 156.

And where the king is party, as in traverse of an office, he that traverseth may challenge the array; and so it is in the case of life. *Co. Lit.* 156.

The array challenged on both sides shall be quashed. *Co. Lit.* 156.

If either party be apprehensive that the other side will challenge the array on account of relationship or interest in the sheriff, the right way, in order to save time, is for him to suggest such matter to the court, and pray a *venire* to the coroners, and if all of them be interested, then to two elizors to be appointed by the court *. If upon showing cause the other party admit the fact, the process shall be directed accordingly. If the other party deny the fact, the process shall be directed to the sheriff, and the other party shall not afterwards be admitted to challenge the array on that account. *Co. Lit.* 137. *Dyer*, 367. 5 *Co.* 36. *Buller's Nisi Prius.* 8*vo. ed.* 306.

If the suggestion be that the sheriff is related to the other party, or interested on the other side; if that be denied, the court will order it to be tried, and then direct the process according to the event of such trial. *Buller's Nisi Prius*, 8*vo.ed.* 306.

Before the 4 & 5 *Ann*, c. 16, the want of hundredors on the trials of actions and informations on penal statutes used to be a frequent cause of challenge; but by that act, and 24 *Geo.* 2. c. 18. *s.* 3, the *venire* is always to be awarded of the body of the proper county.

So before 24 *Geo.* 2. *c.* 18, if a peer was plaintiff or defendant, and a knight was not returned of the jury, the array might have been challenged: but now by sec. 4 of that act no challenge shall be taken to any panel of jurors for want of a knight's being returned on the panel where a peer is a party.

*As to a challenge to the array for favour:* this being no principal challenge, it must be left to the discretion and conscience of the triers. *Co. Lit.* 156. Challenge to the array for favour.

As, if either of the parties be tenant to the sheriff, or if the sheriff have an action of debt against either of the parties, these are causes of challenge to the favour only; for the sheriff thereby is not under the party's influence, but the party under his. *Co. Lit.* 156.

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* See p. 84, supra.

So affinity between the son of the sheriff and the daughter of the party, or the like, is no principal challenge, but to the favour; but if the sheriff marry the daughter of either party, or the like, this, as hath been said, is a principal challenge. *Co. Lit.* 156.

Where the king is a party he may take either a principal challenge, or to the favour. *Co. Lit.* 156. 2 *Hawk. c.* 43. *s.* 31.

But it is said, that the subject cannot take a challenge for the favour against the king, because every one is bound by his allegiance to favour the king: but if the sheriff be a menial servant of the king, there the challenge is good. *Co. Lit.* 156.

By which it seems to be meant, that such a challenge is not good without showing some actual partiality in the sheriff or juror, or some particular cause in respect whereof the king may influence them. 2 *Hawk. c.* 43. *s.* 32.

Challenge to the polls.

If the challenge to the array be determined against the party, he may afterwards have his challenge to the polls; but neither party shall take a challenge to the polls which he might have had to the array. *Co. Lit.* 156. *Bull. Nisi Pri.* 8*vo. ed.* 307.

It is to be seen therefore what is a good cause of challenge to the polls.

A challenge to the *polls* is, as has been before observed, a challenge to the particular jurors.

And these challenges are either *peremptory*, or for *cause* shown.

Peremptory challenge to the polls.

A *peremptory* challenge is so called, because a person may challenge peremptorily upon his own dislike, without showing of any cause*. *Co. Lit.* 156. b.

But a prisoner must take all such challenges himself, even in such cases wherein he may have counsel. *Hawk. c.* 43. *s.* 4.

By the common law, in all capital cases (in which only peremptory challenges were allowed) the prisoner could challenge thirty-five peremptorily. *Lambard, b.* 4. *c.* 14.

That is, one under the number of three full juries: the law judging that five-and-thirty were fully sufficient to allow the most timorous man to challenge through mere caprice; and that he who peremptorily challenged a greater number, or three full

* This provision is full of that tenderness and humanity to prisoners, for which our English laws are justly famous; and seems to be grounded on the following reason, viz. *As every one must be sensible what sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another, and how necessary it is, that a prisoner, when put to defend his life, should have a good opinion of his jury, the want of which might totally disconcert him; the law wills not that he should be tried by any one man against whom he has conceived a prejudice, even without being able to assign a reason for such his dislike.* 4 *Black. Com.* 353.

juries, had no intention to be tried at all. 4 *Black. Com.* 354.

But by 22 *Hen.* 8. *c.* 14. *s.* 7, made perpetual by 32 *Hen.* 8. *c.* 3, *no person arraigned for any murder or felony shall be admitted to any peremptory challenge above the number of twenty.*

If a prisoner therefore challenge above the number of twenty, his challenges, so far as they exceed that number, shall be overruled, and the trial proceed. 2 *Hale's Hist.* 270. 2 *Hawk. c.* 43. *s.* 9.

For the words of the statute are, *that he be not admitted to challenge*; the evident construction whereof is, that any further challenge shall be disallowed or prevented; and being null from the beginning, and never in fact a challenge, the juror shall be regularly sworn. 4 *Black. Com.* 354.

Also by 33 *Hen.* 8. *c.* 23. *s.* 5, it was enacted that this kind of challenge should not be allowed in any cases of high treason or misprision of high treason; and the above act of 22 *Hen.* 8. *c.* 14. *s.* 5, further enacted, that no person arraigned for any petit treason should be admitted to any peremptory challenge above the number of twenty. The 1 & 2 *Phil.* and *Mary*, *c.* 10, however, *restored the ancient course of the common law as to trials of treason of any kind*: and since this last statute, the old challenge of thirty-five in trials of high treason and petit treason has been of course revived *.

It therefore seems agreed, that at this day, in cases of high treason and petit treason, the prisoner may challenge thirty-five peremptorily, and in all other capital offences twenty.

But this peremptory challenge shall not be allowed to the king; for it is enacted by 33 *Ed.* 1. *st.* 4, that *he who challenges a juror for the king shall show cause, and the truth thereof shall be inquired of according to the custom of the court.* And it seems that this statute, being general, extends as well to criminal as civil causes. However, if the king challenge a juror he need not show any cause of his challenge till the whole panel be gone through, and it appear that there will not be a full jury without the person so challenged. And if the defendant, in order to oblige the king to show cause, presently challenge all the rest, yet it hath been adjudged that the defendant shall be first put to show all his causes of challenge, before the king need to shew any. 2 *Hawk. c.* 43. *s.* 3.

A challenge to the polls, for *cause* shown, is either principal, or to the favour †. *Comyns' Dig. tit. Chal.* (c. 2.) Challenge to the polls for cause.

* But it is doubted whether any statute has revived it in the case of misprision of treason, the statute 1 & 2 *Phil.* and *Mary*, *c.* 10, not extending, as it is said, to misprision of high treason. 2 *Hawk. c.* 43. *s.* 5.

† Since the act 3 *Geo.* 2. *c.* 25, (for regulating trials at nisi prius) by which one panel is returned for the whole county, and not less than forty-eight in such panel, causes of challenge to the polls are not so minutely entered into as formerly. *Buller's Nisi Prius*, 8*vo. ed.* 307.

And the principal challenge is reduced to four heads by Sir *Ed. Coke*, viz. *propter honoris respectum*; *propter defectum*; *propter affectum*; and *propter delictum*; *Co. Lit.* 156. b. (p.)

On account of the rank of the juror.

1. *Propter honoris respectum*, or *in respect of the rank and dignity of the juror;* as if a lord of parliament be impanelled on a jury, he may be challenged by either party, or he may challenge himself. *Co. Lit.* 156. 3 *Black. Com.* 361.

Defect or insufficiency.

2. *Propter defectum:* or *for a defect;* as if a juryman be an alien born, this is defect of birth. *Co. Lit.* 156. 3 *Black. Com.* 362.

If he be a villein, slave, or bondman, this is defect of liberty. *Ibid.*

So if the juror be within the age of twenty-one, it is a good clause of challenge. *Co. Lit.* 157.

But the principal deficiency, saith Sir *W. Blackstone*, is *defect of estate* sufficient to qualify him to be a juror. 3 *Black. Com.* 362.

This depends upon a variety of statutes, and is fully treated of in the second division of this title.

Partiality.

3. *Propter affectum;* or *for suspicion of bias or partiality:* jurors ought to be *omni exceptione majores:* free from every objection; and by the words of the writ, such *by whom the truth of the matter may be the better known, and who are in no wise of kin either to the plaintiff or defendant*; which words contain all causes of objection from partiality or incapacity, consanguinity and affinity. 3 *Bacon's Abr.* 258.

Therefore, if the juror be of blood or kindred to either party, this is a principal challenge; for the law presumeth that one kinsman doth favour another before a stranger, and how far remote soever he is of kindred, yet the challenge is good. *Co. Lit.* 157.

So if the juror be under the power of either party, as if council, servant of the robes, or tenant, they are expressly within the intent of the writ. *Co. Lit.* 157.

So if he has declared his opinion touching the matter before hand, that the party is guilty, or will be hanged, or the like; this is a good cause of challenge. 2 *Hawk. c.* 43. *s.* 28.

It hath also been ruled to be a good challenge of a juror on the part of the king, that he hath given his dogs the names of the king's witnesses, 2 *Hawk. c.* 43. *c.* 31.

So an exception against a juror, that he hath found an indictment against the party, for the same cause, hath been adjudged good, not only upon the trial of such indictment, but also upon the trial of another indictment or action, wherein the same matter is either in question, or happens to be material, though not directly in issue. 2 *Hawk. c.* 43. *s.* 27.

And if a man that is one of the grand jurors be returned upon the petit jury, and do not challenge himself, he shall be fined. 2 *Hale's Hist.* 309.

But it hath been adjudged to be no good cause of challenge that the juror hath found others guilty on the same indictment, for the indictment is in judgment of law several against each defendant, for every one must be convicted by particular evidence against himself. 2 *Hawk.* c. 43. s. 29.

It hath been allowed a good cause of challenge on the part of a prisoner, that the juror hath a claim to the forfeiture, which should be caused by the party's attainder or conviction. 2 *Hawk.* c. 43. s. 28.

So if the juror hath part of the land that dependeth upon the same title, it is a principal challenge. *Co. Lit.* 157.

So if he is a parishioner of the parish whereof the other party is parson, and the right of the church comes in question;—or has done any act by which it appears that he cannot be impartial; as if he take information of the case before he be sworn;—or eat or drink at the charge of either party after he be returned, these are principal causes of challenge. *Co. Lit.* 2 *Hale's Hist.* 306.

But it is not a principal challenge to a juror, but only to the favour, that the prosecutor was lately entertained at his house. 3 *Salk.* 81.

If a juror hath been an arbitrator chosen by the plaintiff or defendant in the same cause, and hath been informed thereof or treated of the matter, this is a principal challenge. *Co. Lit.* 157.

But an arbitrator chosen by both parties, whether he have treated of the matter or not, or chosen by one party, if he has never treated thereof: or a commissioner chosen by one party for examination of witnesses, and appointed under the great seal, cannot be challenged principally; but for such cause one may be challenged for favour. *Co. Lit.* 158, 9 *Co.* 71. a.

Neither is it a principal challenge that the juror is a fellow-servant with either party, but only to the favour. *Co. Lit.* 157.

If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge. *Co. Lit.* 157.

But if either party barely labour the juror to appear and to do his conscience, this is no challenge at all, but lawful for him to do it. *Co. Lit.* 157.

Actions brought either by the juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principal challenge; other actions which do not imply malice or displeasure, are but to the favour. *Co. Lit.* 157. b. (1).

4. Challenges *propter delictum* are for some crime or misdemeanor that affects the juror's credit and renders him infamous. 3 *Black. Com.* 363. For infamy.

As for a conviction of treason, felony, perjury, or conspiracy; or if for some infamous offence, he hath received judg-

ment of the pillory, tumbril, or the like; or to be branded, whipt, or stigmatized; or if he be outlawed or excommunicated, or hath been attainted of false verdict, *præmunire*, or, forgery: or, lastly, if he hath proved recreant when champion in the trial by battle, and thereby hath lost his *liberam legem*. 3 *Black. Com.* 363, 364.

And it hath been holden that such exceptions are not solved by a pardon. 2 *Hawk. c.* 43. *s.* 25.

But it seems that none of the above-cited challenges are principal ones, but only to the favour, unless the record of the outlawry, judgment or conviction be produced, if it be a record of another court; or the term be shown, if it be a record of the same court. 3 *Hawk. c.* 43. *s.* 25. *Co. Lit.* 157. b.

Challenges to the polls for favour.

*As to challenges to the polls for favour.*] Although a juror is not under the influence of either side, or has not given apparent marks of partiality, yet there may be sufficient reason to suspect he may be more favourable to one side than the other, and this is a challenge to the favour. The causes of favour are infinite, and in these inducements to suspicion of favour, the question is, whether the juryman is indifferent as he stands unsworn; for a juryman ought to be perfectly impartial to either side; for otherwise his affection will give way to the evidence of one party, and an honest but weak man may be so much biassed, as to think he goes by his evidence, when his affections add weight to the evidence. *Now since the writ expects those by whom the truth may be best known, it excludes all those who are apparently partial without any trial, because they are not under the qualifications in the writ, since the truth cannot be unknown to them; but where the partiality is not apparent, but only suspicious, then the juror is to be tried whether favourable or not,* that is, whether he comes within the description of the writ: and if the triers think he does, then he is to be set aside. *Co. Lit.* 157. b. 3 *Bacon's Abr.* 258, 259.

At what time the challenge is to be taken.

It is laid down as a rule, that there can be no challenge either to the array, or polls, before a full jury appears; for if there be not a full jury the cause will remain for defect of jurors; therefore if a full jury do not appear, the party who intends to challenge the array may pray *a tales* and afterwards challenge the jury. *Hobart*, 235. *Buller's Nisi Prius*, 8vo. *ed.* 307.

But the challenge to the array must be made before any of the jury are sworn. *Ibid.*

So if you would challenge the polls, you must do it before the juryman is sworn. *Buller's Nisi Pri.* 8vo. *ed.* 307.

For it is laid down as a rule, that no juror can be challenged without consent after he hath been sworn, either in a criminal or civil cause, or either at the suit of the king or subject, whether on the same day, or according to the better opinion, on a former on the same trial, unless it be for some cause which happened since he was sworn. 2 *Hawk. c.* 43. *s.* 1.

After a challenge to the array the party may challenge the polls; but after a challenge to the polls, there can be no challenge to the array. *Co. Lit.* 158. a.

And he who hath several causes of challenge against a juror must take them all at once. *Ibid.*

Also if a juror be challenged by one party and found indifferent, the other party may challenge him afterwards. *Ibid.*

And in case of treason, or felony, if the prisoner challenge a juror for cause which is held insufficient, he may afterwards challenge him peremptorily. *Ibid.*

For although the cause shown prove insufficient to set aside the juror, yet perhaps the bare questioning his indifference may sometimes provoke a resentment; to prevent all ill consequences from which, he is still at liberty, if he pleases, peremptorily to set him aside. 4 *Black. Com.* 363.

The challenge to the array must be in writing (IV), but when the challenge is to the polls, it is a short way by a verbal challenge. *Tr. per Pais*, 172.

When the king is party, the defendant that challengeth for cause must show his cause presently. *Co. Lit.* 158.

But if a juror be challenged between party and party, and there be enough of the panel besides, the cause of challenge needeth not to be shewed, unless the other side challenges all the rest. *Tr. per Pais*, 143.

How such challenge is to be tried.

A principal cause of challenge being grounded on a manifest presumption of partiality, if it be found true, it unquestionably sets aside the array of the juror, without any other trial than its being made out to the satisfaction of the court, before which the panel is returned. *Co. Lit.* 157. b. 3 *Bacon's Abr.* 266.

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(IV.) The Form of a Challenge to the Array, according to a Precedent, in *Coke*'s Entries.

*And now at this day, to wit,* ——— *come the aforesaid* A *the plaintiff, and* B *the defendant, by their attornies, and the jurors were impanelled and demanded, and came, and thereupon the aforesaid* B *challengeth the array of the panel aforesaid, because he saith that that panel was arrayed by one* S S, *esq. now and at the time of making the array aforesaid, sheriff of the said county of* ———*, *which said sheriff is a kinsman of the aforesaid* A *the plaintiff, to wit* [here set forth the degree of affinity with convenient certainty] *and this he is ready to verify, whereupon he prayeth judgment, and that the said panel may be quashed, which said challenge, by* ——— *and by* ——— *triers, to this chosen and sworn is found true, and therefore let the panel aforesaid be quashed and removed.*

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* If the challenge is because the panel was returned at the instance of one of the parties, in this place say; *at the nomination of the said* A *the plaintiff and in his favour.*

But a challenge to the favour, when the partiality is not apparent, must be left to the discretion of the triers. *Ibid.*

If the array be challenged, it lies in the discretion of the court how it shall be tried; sometimes it is done by two attornies, sometimes by two coroners, and sometimes by two of the jury; with this difference, that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned; if the challenge found in favour of partiality, then by any other two assigned thereunto by the court *. 2 *Hale's Hist.* 275.

As to a challenge to the polls; if a juror be challenged before any juror is sworn, two triers shall be appointed by the court; and if he be found indifferent, and sworn, he and the two triers shall try † the next challenge; and if he be tried and found indifferent, then the two first triers shall be discharged, and the two jurors tried and found indifferent shall try the rest. 2 *Hale's Hist.* 275.

If the plaintiff challenge ten, and the prisoner one, and the twelfth be sworn, then he that remains shall have added to him one chosen by the plaintiff and another by the prisoner, and they three shall try the challenge; and if six be sworn, and the rest challenged, the court may assign any two of the six sworn to try the challenges. 2 *Hale's Hist.* 275.

The truth of the matter alleged as cause of challenge must be made out by witnesses, to the satisfaction of the triers; also the juror challenged may on a *voir dire* ‡ be asked such questions as do not tend to infamy or disgrace; such as whether he hath a freehold, whether he hath an interest in the cause; and in a civil cause, whether he hath given his opinion before-hand upon the right, which he might have done as arbitrator between the parties. *Co. Lit.* 158. *Tri per Pais*, 158. *Salk.* 153.

But in no case can a jury be asked, whether he hath been whipped for larceny, or convict of felony, or whether ever he was committed to Bridewell for a pilferer, or to Newgate for

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* When a challenge is to the array for favour, the plaintiff may either confess it, or plead to it; if he pleads, the judges assign triers to try the array, which seldom exceed two, who being chosen and sworn, the associate, or clerk in court, doth declare and rehearse unto them the challenge; and after he hath so done, concludes to them thus, *and so your charge is to inquire whether it be an impartial array or a favourable one:* and if they affirm it, the clerk enters underneath the challenge *affirmatur*; but if the triers find it favourable, then thus, *calumnia vera. Tri. per Pais*, 165.

† And the triers' oath is, *You shall well and truly try whether A (the jury-man challenged) stand indifferent between the parties to this issue.* So help you God. 1 *Salk.* 152.

‡ *Veritatem dicere*, a general oath to make true answer to all questions that may be asked.

clipping and coining, or whether he is a villein or outlawed, or the like, because these kind of questions tend to make a man discover that of himself which tends to his shame, infamy and disgrace. *Keeling*, 9. *Tri. per Pais*, 158. *Salk.* 153.

Besides the challenges which may be taken as above mentioned, it is enacted by 3 *Hen.* 8. *c.* 12, *that in cases where the king is party, the justices of gaol delivery, or of the peace in sessions, may reform the panels of jurors, by putting to, and taking out of the names of the person impaneled, by their discretion; and if the sheriff do not return the panel so reformed, he shall forfeit* 20l. *half to the king and half to him that shall sue.* Amending panels without challenge.

This act extends not only to panels of grand inquests, but also to panels of the petty jury. 2 *Hale's Hist.* 156. 265.

For if a prisoner be arraigned before the judge that sits upon the crown side, it hath been always usual for the judge to send for a jury to the judge of *nisi prius*; and when the jury is brought, the sheriff returns them between the king and the prisoner, which is by virtue of this statute. 2 *Hale's Hist.* 265.

## *VI. How jurors are to be impanelled and sworn.*

By 3 *Geo.* 2. *c.* 25, the name of each person summoned and impanelled, with his addition and place of abode, shall be written in distinct pieces of parchment or paper of equal size, and shall be delivered to the marshall of the judge, by the under-sheriff, and shall, by the direction of the marshal, be rolled up all in the same manner, and put into a box or glass; and when a cause is brought to be tried, some indifferent person in open court shall draw out twelve of the papers; and if any of the persons drawn shall not appear, or be challenged and set aside, then a further number, till twelve be drawn who shall appear; and the said twelve persons so first drawn and approved, their names being marked in the panel, and they being sworn, shall be the jury to try the cause; and the names of the persons sworn shall be kept apart in some other box, till the jury have given in their verdict, and the same is recorded, or till the jury be discharged; and then the same names shall be rolled up again and returned to the former box, and so *toties quoties.* *s.* 11. In civil causes.

But if any cause shall be brought on to be tried, before the jury in any other cause shall have brought in their verdict or be discharged, the court may order twelve of the residue to be drawn as before, for trial of the cause. *s.* 12.

In capital cases the sheriff returns the panel of the jury, who being called and appearing, the prisoners are told by the In capital cases.

clerk, that these good men now called and appearing are to pass on their lives and deaths, therefore if they will challenge any of them they are to do it as they come to the book, and before they are sworn: and if no challenge hinder, the jury are commanded to look on the prisoners, and then severally twelve of them, neither more nor less, are sworn. 2 *Hale's Hist.* 293.

Although there be twenty prisoners at the bar for several felonies, and the oath is general to try and true deliverance make between the king and prisoners at the bar, yet the jury is to inquire of no more than what they are particularly charged with; and therefore, though twenty have pleaded, and stand at the bar when the jury is sworn, yet the court may stay any number of the prisoners, and so the jury stand charged with no more than what are thus particularly charged upon them; and when they go from the bar, and have brought in their verdict touching these particulars charged upon them, then if the same jury pass upon the remaining prisoners, yet they are to be called over again, the prisoners reminded of their challenges, and the jury sworn *de novo* upon the trial of the rest of the prisoners. 2 *Hale's Hist.* 294.

### *VII. How to be kept and discharged.*

Bailiff to attend jury box.

An officer of the court ought always to be placed at the door of the box where the jurors sit, to prevent any one having communication with them. *Buller's Nisi Pri. 8vo. ed.* 308.

Bailiff on their departure to be sworn to keep them.

And when the jurors depart from the bar, a bailiff ought to be sworn in a civil as well as a criminal case to keep them together, and not to suffer any to speak with them. 2 *Hale's Hist.* 296 *Palm.* 380.

Receiving evidence after withdrawn.

The court may permit them to take with them letters patent and deeds under seal; and the exemplification of witnesses in Chancery if dead, but not a writing without seal, unless by consent of parties: but though the jury take with them patents deeds, &c. without leave of the court, or writings without seal, books, &c. without consent of court or party, it shall not void the verdict, though they be taken by the delivery of the party for whom the verdict was given. *Buller's Nisi Pri. 8vo. ed.* 308.

So though one of the jury show a writing which was not given in evidence to his companions. *Ibid.*

But if they examine witnesses by themselves, though the evidence be in effect the same which was given in court, yet it will avoid the verdict. *Cro. Eliz.* 189. *Buller's Nisi Pri. 8vo. ed.* 308.

So if the party for whom the verdict is given, or any for him,

deliver a letter or other writing not given in evidence, it will avoid the verdict *. *Buller's Nisi Pri. 8vo. ed.* 308.

But after their departure they may desire to hear one of the witnesses again, and it shall be granted, so he deliver his testimoney in open court; and also they may desire to propound questions to the court, for their satisfaction, and it shall be granted, so it be in open court. 2 *Hale's Hist.* 296.

To be kept, without meat, drink, fire, or candle.

The jury must be kept together without meat, drink, fire, or candle, till they are agreed. *Co. Lit.* 227. b.

So in an inferior court if the jury will not agree on their verdict, the way is, as in other courts, to keep them without meat, drink, fire, or candle, till they agree; and the steward may from time to time adjourn the court till such agreement. *Salk.* 201. 7 *Mod.* 1.

And it is fineable for the jury to eat at their own charge after they are departed from the bar: but it will not avoid the verdict, as it will if they eat at the charge of him for whom the verdict was given † before they are agreed on their verdict. *Buller's Nisi Pri. 8vo. ed.* 308.

But they may eat at his charge after a privy verdict. *Ibid.*

And with the assent of the justices they may both eat and drink; as if any of the jurors fall sick before they be agreed of their verdict, then by the assent of the justices he may have meat or drink, and also such other things as may be necessary for him and his fellows also, at their own costs, or at the indifferent costs of the parties, if they so agree: and if they cannot agree, the justices may in such case suffer the jury to have both meat and drink for a time, to see whether they will agree. *Dr. & Stud.* 158.

Jury not agreeing.

If the jury agree not before the departure of the justices of gaol delivery into another county, the sheriff must send them along in carts, and the judge may take and record their verdict in a foreign county. *Ventris*, 97. 2 *Hale's Hist.* 297.

But if the case so happen that the jury can in no wise agree, as if there be eleven agreed, and but one dissenting, who says he will rather die in prison, yet the verdict shall not be taken by eleven, no nor yet the refuser fined or imprisoned; and therefore where such a verdict was taken by eleven, and the twelfth fined and imprisoned, it was upon great advice ruled the verdict was void, and the twelfth man delivered and a new

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* Note. Such cause must be returned upon the *postea*, or made parcel of the record, otherwise it will not stay judgment or be error. *Buller's Nisi Pri. 8vo. ed.* 308.

† This ought also be certified by the judge on the *postea*. *Ibid.*

*venire* awarded; for men are not forced to give their verdict against their judgment. 2 *Hale's Hist.* 297.

For the justices (as it seemeth) in such case may take such order in the matter, as shall seem to them by their discretion to stand with reason and conscience, by awarding a new inquest immediately, or otherwise, as they shall think best by their discretion, like as they may do, if one of the jury die* before the verdict. *Dr. & Stud.* 158.

If the jury say they are agreed, the court may examine them individually; and if in truth they are not agreed, they are fineable. 2 *Hale's Hist.* 299.

Giving in their verdict.

It seems to have been anciently an uncontroverted rule, and hath been allowed even by those of the contrary opinion to have been the general tradition of the law, that a jury sworn and charged in a capital case cannot be discharged (without the prisoner's consent) till they have given a verdict; and notwithstanding some authorities to the contrary in the reign of *Car.* 2, this hath been holden for clear law, both in the reign of *Jac.* 2, and since the Revolution. 2 *Hawk.* c. 47. s. 1. *Foster*, 22.

And it seems to have been always agreed, that in all capital cases the jury must give their verdict openly in court, and cannot give a privy verdict. 2 *Hawk.* c. 47. s. 2.

But they may, in causes between party and party, if the court be risen, give a private verdict before any of the judges of the court; and then they may eat and drink, and the next morning in open court they may either affirm or alter their private verdict; and that which is given in court shall stand. *Co. Lit.* 227.

Also it is settled that the jury may give a special verdict in any criminal case, whether capital or not capital, as well as in a civil. 2 *Hawk.* c. 47. s. 3.

As if one be indicted for grand larceny, that is, for stealing goods *above* the value of 12*d.* yet the jury may find specially that he is guilty, but that the goods are not above the value of 12*d.* in which case he shall only have judgment of petit larceny. 1 *Hawk.* c. 33. s. 35. 2 *Hawk.* c. 47. s. 6.

But the king cannot be nonsuit, for he is in judgment of law ever present in court. *Co. Lit.* 227.

Withdrawing a juror.

As to trials going off for want of jurors, by means of drawing a juror, it seems, 1*st*, That in capital cases a juror cannot be withdrawn, though all parties consent to it. 2*dly*, that in criminal cases not capital a juror may be withdrawn, if both parties consent, but not otherwise. 3*dly*, That in all civil causes a juror cannot be withdrawn, but by consent of all parties. *Carth.* 465.

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* So upon the like reason if he be taken violently ill.

After the verdict is recorded, the jury cannot vary from it; but before it be recorded, they may vary from the first offer of their verdict; and that verdict which is recorded shall stand. *Co. Lit.* 227.

And the court will not after the trial amend the *postea*; such as by increasing the damages given by the jury, although all the jurymen join in an affidavit, stating their intention to have been to give the plaintiff such increased sum, and that they conceived that the verdict they had given was calculated to give him such sum; for it would introduce a very dangerous practice, if they were to admit such an affidavit; and it is better that the party should suffer an inconvenience, than that such a rule should be established: for the proper time for making such an explanation is at the trial, and afterwards it is too late. *Jackson* v. *Williamson* and others. 2 *Term Rep.* 28.

## VIII. *For what misdemeanors punishable.*

The court may proceed by way of attachment against jurors for misdemeanors; but herein it is observable, that jurors may be considered either in a ministerial capacity, *viz.* as persons bound to attend the court, in order to perform the duty for which they are returned, until they are discharged; or in a judicial capacity, *viz.* as judges of the fact which is to be tried or inquired by them. 2 *Hawk. c.* 22. *s.* 13.

1. In the former capacity they are liable to be punished in several instances; as for refusing to appear *, withdrawing themselves before they are sworn, or refusing to be sworn; for which every court of record may, of common right, impose such a reasonable fine, on any one returned on a grand or petit jury as shall seem convenient. 8 *Co.* 38. b. 41. a. 2 *Inst.* 242. 2 *Hale's Hist.* 309.

So if after they are sworn they refuse to give any verdict at all. *Vaughan*, 152.

So if they endeavour to impose upon the court, as where a petit jury offer a verdict to the court, as agreed by their whole number, when in truth some of them have not agreed to it; or where they agree upon two verdicts, and first to offer one of them to the court, and to stand to it, if the court shall express no dissatisfaction to it; but if the court shall dislike it then to give the other. 2 *Hawk. c.* 22. *s.* 17.

So for misbehaving themselves after their departure from the bar; as where they do not all keep together, till they have given their verdict, or where any of them carrying any thing eatable with them in their pockets, or eat or drink, or other-

* This has been observed before in p. 83, supra.

wise refresh themselves without leave from the court, before they have given their verdict, though they were agreed on it, and were also all the time in the custody of the bailiff appointed to take care of them. 2 *Hawk. c.* 22. *s.* 18.

Also if the jurors cast lots for their verdict it shall be set aside; and that although it may be according to the evidence, and the opinion of the judge: and they shall be fined for the contempt. 3 *Keble*, 805. 2 *Levinz*, 140. 205. 2 *Jones* 83. 1 *Strange*, 642.

But the court cannot receive an affidavit from any of the jurymen, that the jury were divided in opinion, and tossed up, and that the plaintiff's friends won; in all of whom such conduct is a very high misdismeanor, but in every such case the court must derive their knowledge from some other source; such as from some persons having seen the transaction through a window, or by some such other means. *Vasie* v. *Delaval*, 1 *Term Rep.* 11.

Jurors are likewise punishable for sending for, or receiving instructions from either of the parties concerning the matter in question, and therefore much more for receiving a bribe. 2 *Hawk. c.* 22. *s.* 19.

Also if any juror do take of either party to give his verdict, he shall on conviction by bill or plaint, before the court where the verdict shall pass, forfeit *ten times as much* as he has taken, half to the king, and half to him that shall sue. 5 *Ed.* 3. *c.* 10. 34 *Ed.* 3. c. 8. 38 *Ed.* 2. *st.* 1. *c.* 12.

So if a juryman have a piece of evidence in his pocket, and after the jury sworn and gone together, he showeth it to them, this is a misdemeanor fineable in the jury; but it avoids not the verdict though the case appear upon examination. *Cro. Eliz.* 616. 2 *Hale's Hist.* 306.

But it is no offence in a juror to exhort his companions to join him in such a verdict as he thinks right. 1 *Hawk. c.* 83. *s.* 8.

2. As to the punishment of jurors in their judicial capacity: it seems to be certain, that no one is liable to any prosecution whatsoever in respect of any verdict given by him in a criminal matter, either upon a grand or petit jury. For since the safety of the innocent, and punishment of the guilty, doth so much depend upon the fair and upright proceedings of jurors, it is of the utmost consequence that they should be as little as possible under the influence of any passion whatsoever; and therefore lest they should be biassed with the fear of being harassed by a vexatious suit, for acting according to their conscience, the law will not leave any possibility for a prosecution of this kind. 1 *Hawk. c.* 72. *s.* 5. 2 *Hawk. c.* 22. *s.* 20.

As to the objection, that an attaint* lies against a jury,

* See title Attaint, in vol. i.

for a false verdict in a *civil cause*, and that there is as much reason to allow it in a criminal one, it may be answered, that in an attaint a man's property is only brought into question a second time, and not his liberty or life. *Ibid.*

This was fully considered and debated in *Bushel's* case, who having been committed by the justices of oyer and terminer at the *Old Bailey* brought his *habeas corpus* in the court of *Common Pleas*; to which it was returned, that he was committed for the fine of 40 marks imposed on him for having, with other jurors, acquitted certain defendants of an indictment for an unlawful assembly against full and manifest evidence, and against the direction of the court in the matter of law; and upon this return he was discharged, and the return was adjudged insufficient, for not setting forth particularly so much of the evidence that it might appear that it was full and manifest; and likewise for not setting forth, that the defendant did know and believe it to have been full and manifest; and also, for not showing what the direction of the court was, and in what manner the defendant found against it. AND IT WAS ALSO RESOLVED, that petit jurors are in no case fineable for giving a verdict against the evidence delivered in court, whether they be liable to an attaint for such verdict or not; not only because the jury are by law the proper judges of matter of fact, as the judges are of matter of law, and therefore ought to be free in their judgment of it, without being over-ruled by the judges, who, strictly speaking, have no more to do with the judgment of the fact, than the jurors have with the judgment of the matter of law *; but also because it is not possible that a judge can certainly know that a juror acts corruptly, in giving his verdict contrary to the strength of the evidence delivered in court; for he may be influenced by his own personal knowledge of the truth of the fact †, of the credit of the witnesses, the reputation of the parties, and many other circumstances unknown

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* But if the jury will take upon them the knowledge of the law upon the matter, they may; yet it is the safest way to find the special matter where the case is doubtful. *Co. Lit.* 228. And if the jury find according to the direction of the judge in matter of law, although the judge be mistaken, yet the jury shall in no wise be punishable. 1 *Lord Raym.* 470.

† For the jury may give a verdict without testimony, where they themselves have conusance of the fact. *Tr. per Pais*, 209. 279. 1 *Vent.* 67.

But if they give a verdict on their own knowledge, they ought to tell the court so. However they may be sworn as witnesses; and the fair way is to tell the court before they are sworn, that they have evidence to give. 1 *Salk.* 405.

For certainly it is of dangerous consequence to receive a verdict against evidence, on supposal that some of the jury knew otherwise, or on private information given by any juryman to the rest, where he cannot be cross examined. *Tri. per Pais*, 209.

to the judge, and well known to the jury*. *Vaughan*, 143. 2 *Hawk*. c. 22. s. 20.

And herewith my lord *Hale* seems to agree †, and shows the unreasonableness of punishing a jury for going contrary to the direction of the court in matters of law; because it is impossible any matter of law could come in question till the matter of fact were settled and stated, and agreed by the jury, and of which matter of fact they were the only competent judges; also, says he, it were the most unhappy case that could be to the judge, if he, at his peril, must take upon him the guilt or innocence of the prisoner; *and if the judge's opinion must rule the matter of fact, the trial by a jury would be useless.* 2 Hal. Hist. 160, 161. 211. 315.

But it is said by *Hawkins*, that if it shall plainly appear in any case, that jurors are perfectly satisfied of the truth of a fact, whereupon they declare to the court, that they find it in such a particular manner; and the court directly tell them, that upon the fact so found, as they have agreed it to be, the judgment of the law is such or such, yet they obstinately insist upon a verdict contrary to such direction; *it seems agreeable to the general reason of the law, that the jurors are finable by the court in such a case, unless an attaint lies against them;* for otherwise they would not be punishable for so palpable a partiality in taking upon them to judge of matters of law, which they have nothing to do with, and are presumed to be ignorant of, contrary to the express direction of one, who by the law is appointed to direct them in such matters, and to be presumed of ability to do it. 2 *Hawk*. c. 22. s. 21.

Also if a judge, for the better direction and information of a jury, shall ask them their opinions concerning such a particular fact, and they shall refuse to answer him, and obstinately

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* For which cause the law provided, that all issues should be tried by the neighbourhood of the place in which they are supposed to arise, because neighbours are presumed to have better knowledge than others, of what concerns their neighbours. 2 *Hawk*. c. 22. s. 20.

† But what, saith *Hale*, if a jury give a verdict against all reason, convicting or acquitting a person indicted of felony; what shall be done? If the jury *convict* a man against, or without evidence, and against the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon:—if the jury acquit him in like manner, the court may send them back again (and so in the former case) to consider better of it*, before they record the verdict; but if they are peremptory in it, and stand to their verdict, the court must take their verdict and record it. 2 *Hale's Hist.* 309, 310.

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* But this is by many thought hard, and seems not of late years to have been so frequently practised as formerly. 2 *Hawk*. c. 47. s. 11. Note also, there can be no new trial for or against the king. *Tri. per Pais*, 210.

insist to deliver in their verdict, as they think fit, contrary to his direction, it seems questionable whether they may not be fined in such case also, unless an attaint lie against them; for that it is the duty of jurors to take the advice and information of the court, in order to be governed by it, as far as shall be consistent with their consciences. 2 *Hawk. c.* 22. *s.* 22.

But in the case of a PROSECUTION FOR A LIBEL, it is by 32 *Geo.* 3. *c.* 60, (after reciting, that doubts had arisen, whether on the trial of an indictment or information for the making or publishing *any libel*, it was competent to the jury to give their verdict upon the whole matter in issue;) DECLARED, that on every such trial, the jury may give a general verdict of guilty or not guilty upon the whole matter in issue; and shall not be required or directed by the court or judge, to find the defendant guilty, merely on the proof of the publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information. *s.* 1.

But it is provided, that on every such trial, the court or judge shall, according to their discretion, give their opinion and directions to the jury on the matter in issue, in like manner as in other criminal cases; that the jury may find a special verdict in their discretion, as in other criminal cases; and that in case the jury find the defendant guilty he may move in arrest of judgment, in like manner as before the passing of the act. *s.* 2, 3, 4.

Indemnity of jurors.

If a man assault or threaten a juror, for giving a verdict against him, he is highly punishable by fine and imprisonment. 1 *Hawk. c.* 21. *s.* 14.

And if he strikes him in the court, in the presence of the courts at *Westminster*, or of the justices of assize, or oyer and terminer, he shall lose his hand, and his goods, and profits of his lands during life, and suffer perpetual imprisonment. 1 *Hawk. c.* 21. *s.* 3.

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# JUSTICES OF PEACE.

THE common law hath ever had a special care and regard for the conservation of the peace; for peace is the very end and foundation of civil society. 1 *Black. Com.* 349.

Therefore, before the present constitution of justices was invented, there were peculiar officers appointed by the common law for the maintenance of the public peace. *Ibid.*

Under this title, it is therefore proposed to consider:

I. *How conservators of the peace were provided by the common law.*

II. *How justices of the peace were first instituted.*

III. *Their commission, the manner of appointing them, and by what means their authority may determine.*

IV. *Their qualification and oaths.*

V. *Their authority and jurisdiction pursuant to the commission of the peace, and the general statutes relating to them.*

And herein:

i. *What authority they have in relation to treason, præmunire, and misprision of treason.*

ii. *What in relation to felonies.*

iii. *What in relation to inferior offences.*

iv. *How far they have power to proceed on indictments not taken before themselves.*

v. *By what justices the jurisdiction must be exercised; and herein by what name such justices are to be described.*

vi. *How far a justice of a county may act out of it or within a liberty.*

vii. *Their power to administer oaths.*

VI. *Regulation of their fees.*

VII. *How to account for penalties recovered before them out of sessions.*

*VIII. How far protected in the execution of their office, and herein of their punishment for misdemeanors.*

*IX. Slandering them.*

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*I. How conservators of the peace were provided by the common law.*

It seems that conservators of the peace, by the common law, were of two sorts:—1. Those who in respect of their offices had power to keep the peace, but were not simply called by the name of conservators of the peace, but by the name of such offices.—2. Those who were constituted for this purpose only, and were simply called by the name of conservators or wardens of the peace. 10 *St. Tri.* 317. 2 *Hawk. c.* 8.

1. Of the *first sort;* the king is certainly the principal, from whom all authority of this kind was originally derived, and who still continues to have the same in his own person. *Lambarde, b.* 1. *c.* 3. *Dalton, c.* 1. 2 *Hawk. c.* 8. *s.* 1. By offices

But it seems certain, that no duke, earl, or baron, *as such,* have any greater authority to keep the peace than mere private persons. *Lambarde, b.* 1. *c.* 3. 2 *Hawk. c.* 8. *s.* 1.

The lord chancellor, or lord keeper of the great seal;—the lord high steward of *England;*—the lord marshal;—and lord high constable of *England;*—and every justice of the *King's Bench;*—and as some say, the lord treasurer;—have, as incident to their offices, a general authority to keep the peace throughout all the realm, and to award process for the surety of the peace, and to take recognizance for it:—and the master of the rolls hath also the like power, either as incident to his office, or at least by prescription. *Dalton, c.* 1. *Lambarde, b. c.* 1. 3. *Cromp.* 6. *Comyns' Dig. tit. Justices of Peace* (a. 4.). 2 *Hawk. c.* 8. *s.* 2.

But neither privy counsellors nor secretaries of state are conservators of the peace. 11 *State Tri.* 320.

Also all courts of record, as such, have power to keep the peace within their town precincts; and the justices of gaol delivery may take surety of the peace from a person committed for not finding such surety. *Lambarde, b.* 1. *c.* 3. 2 *Hawk. c.* 8. *s.* 3.

Also every sheriff is a principal conservator of the peace within his county, and may *ex officio* award process, and take surety for it; and it seems the better opinion, that surety so taken is to be looked on as a recognizance of matter of record, and not as a common obligation, because it is

taken by virtue of the king's commission. 2 *Hawk. c.* 8. *s.* 4.

Also, a coroner * is another principal conservator of the peace, and may bind any one to the peace who shall make an affray in his presence; but he is said to have no authority to grant process for the peace; and it seems that the security taken by him for the peace is not to be looked on as matter of record, but as matter in pais, only except where it is taken by him as judge in his own court for an affray in his presence. *Crom.* 6. *Lambarde*, *b.* 1. *c.* 5. 2 *Hawk. c.* 8. *s.* 5.

Also, every high and petit constable † are, by the common law, conservators of the peace within their several limits, and may take order for the keeping of the same. 2 *Hawk. c.* 8. *s.* 6.

2. Conservators of the peace by the common law, who were constituted for that purpose only, and were simply called by the name of conservators or keepers of the peace, were of two kinds,—ordinary and extraordinary. 2 *Hawk. c.* 8. *s.* 6.

Those of the first kind were either by tenure;—or by election;—or by prescription. *Ibid.*

By tenure.

Conservators of the peace by tenure, were those who held lands of the king by this service, among others, of being conservators of the peace within such a district. *Co Lit.* 106. 2 *Hawk. c.* 8. *s.* 7.

By election.

Conservators of the peace by election, were those who were chosen to such office in pursuance of the king's writ to such purpose (as all sheriffs anciently were, and as coroners still are), by the freeholders of the county court; after which election it was usual for the king to send another writ to the persons so chosen, commanding them diligently to attend their said office, till they should receive a command from the king to the contrary. 2 *Inst.* 174. 2 *Hawk. c.* 8. *s.* 8.

By prescription.

Conservators of the peace by prescription, were those who claimed such power from an immemorial usage in themselves and their predecessors, or ancestors, or those whose estate they had in certain lands, to exercise the like power, which wholly depended upon such usage, both as to its extent and the manner in which it was to be exercised. 2 *Hawk. c.* 8. *s.* 9.

But it seems, that the power of such conservators of the peace, whether by tenure, election or prescription, was no greater than that of constables at this day, unless it were enlarged by some special grant or prescription. *Dalton*, *b.* 1. *s.* 3. *Crom.* 6. 2 *Hawk. c.* 8. *s.* 11.

Extraordinary conservators of the peace.

The extraordinary conservators of the peace were persons specially commissioned, in times of imminent dangers, either

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* See title Coroner.  † See title Constable.

from rebels or foreign invaders, to take care of and defend such a particular district committed to their charge, and to preserve the peace within the limits of it; and these had power to command the sheriff with his whole *posse* to aid and assist them. *Lambarde*, b. 1. c. 3. 2 *Hawk*. c. 8. s. 12.

### II. *How justices of peace were first instituted.*

When queen *Isabel*, the wife of *Ed*. II. had contrived to depose her husband by a forced resignation of the crown, and had set up his son *Ed*. III. in his place *; this being a thing then without example in *England*, it was feared would much alarm the people; especially as the old king was living, though hurried about from castle to castle, till at last he met with an untimely death. 1 *Black*. *Com*. 350.

To prevent therefore any risings, or other disturbance of the peace, the new king sent writs to all the sheriffs in England, giving a plausible account of the manner of his obtaining the crown; and withal commanding each sheriff that the peace be kept throughout his bailiwick, on pain and peril of disinheritance and loss of life and limb. *Ibid*.

In a few weeks after the date of these writs, it was ordained by the statute 1 *Ed*. 3. c. 16†, that *in every county good men, which be no maintainers of evil, or barrators, shall be assigned to keep the peace*.

And by 28 *Ed*. 3, stat. 2. c. 2, *two or three*‡ of the best reputation in the counties shall be assigned keepers of the peace by the king's commission; and at what time need shall be, the same with other wise and learned in the law shall be assigned to hear and determine felonies and trespasses done against the peace.

In this manner, and upon this occasion, was the election of the conservators of the peace taken from the people, and given to the king. 1 *Black*. *Com*. 351.

But still they were only called *conservators*, wardens, or keepers of the peace, till the statute 34 *Ed*. 3. c. 1. gave them the power of trying felonies; and then they acquired the more honourable appellation of justices. 1 *Black*. *Com*. 351.

And by the said stat. 34 *Ed*. 3. c. 1, it is enacted, that *in every county of* England *shall be assigned for the keeping of*

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* See Hist. Eng. A. D. 1327.

† As the justices of peace were first instituted by this statute, a person cannot be a justice of peace by prescription. 4 *Leon*. 139 Neither can such justices of peace have any jurisdiction; but what the statutes give them, by reason of their having been created within time and memory. *Salk*. 406.

‡ See note *, p. 116.

*the peace, one lord, and three or four* of the most worthy men in the county, with some learned in the law; and they shall have power to restrain evil doers, rioters, and all other barretors, and to pursue, arrest, take, and chastise them according to their trespass or offence, and cause them to be imprisoned and punished; and also to inquire of those that have been pillors and robbers beyond the sea, and go wandering and will not labour, and to take and arrest all that they find by indictment or by suspicion, and put them in prison, and to take of them that be not of good fame, surety for their good abearing, and also to hear and determine at the king's suit, all manner of felonies and trespasses done in the same county.*

And it is enacted by 2 *Hen.* 5. *stat.* 2. c. 1, that *justices of peace shall be made of the most sufficient persons dwelling in the counties, by the advice of the chancellor* †, *and of the king's counsel, without taking other persons dwelling in foreign counties, except lords and the justices of assizes named by the king and his council, and except also the king's chief stewards of the duchy of* Lancaster.

### *III. Their commission; manner of appointing them; and by what means their authority may determine.*

Justices of the peace are judges of record appointed by the king, to be justices within certain limits, for the conservation of the peace, and for the execution of divers things comprehended within their commission, and within divers statutes committed to their charge. *Dalton*, c. 2.

It seems that justices of the peace are at this day of three sorts, and are appointed or created by three means. *Dalton*, c. 3, s. 5.

That is to say, 1. By act of parliament. 2. By charter or grant made by the king under the great seal. 3. By commission.

By statute.

1. *First*: by act of parliament; as the bishop of *Ely* and his successors, and their temporal stewards of the isle of *Ely* (for the time being), shall be justices of peace within the said isle, and shall use and have within the said isle all such powers as

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* The rule in this as well as other ancient statutes touching the number of justices is now disregarded, and the cause seems to be (as *Lambarde* observed long ago), that the growing number of statute laws committed from time to time to the charge of justices of the peace, have occasioned also (and very reasonably) their increase to a larger number. 4 *Black. Com.* 352.

† The power of *Chancery* extends only to putting them in, and cannot afterwards punish them for misbehaviour; the redress is to move the *King's Bench* for an information, and afterwards the complainant may apply to *Chancery* to turn them out of the commission. 2 *Atkins*, 2.

doth belong to any justice of peace within any county. 27 *Hen.* 8. *c.* 24. *s.* 20.

And so of the bishop of *Durham* and his temporal chancellor, within the county palatine of *Durham*; and also the archbishop of *York* and his temporal chancellor, within the shire and liberty of *Hexham*, otherwise *Hextolsham.* 27 *Hen.* 8. *c.* 24. *s.* 21, 22.

And by 9 *Geo.* 3. *c.* 30, it shall be lawful for the treasurer, comptroller, surveyor, clerk of the acts, or any commissioner of the navy, *in all places whatsoever*, to execute the office and duty of a justice of the peace, *in causing any person charged with forging or procuring to be forged, any letter of attorney, bill, ticket, certificate, assignment, last will or other power, or with publishing the same as true, in order to receive any wages, pay, or other allowance, due to any officer, seaman, or other person in the service of his majesty, or with taking or procuring false oaths to be taken for any of the purposes aforesaid, or to obtain a probate of any will or letters of administration, in order to receive such wages, pay, or other allowance, or with stealing or embezzling any naval stores, the property of his majesty*, to be apprehended, committed, and prosecuted for the same, and all constables, headboroughs, keepers of gaols and other officers, are to execute and obey all such warrants as shall be issued by the persons aforesaid, touching any of the matters herein before contained. *s.* 5.

2. *Secondly*: by grant made by the king by his letters patent under the great seal, as mayors and the chief officers in divers corporate towns; and such the king cannot discharge again at his pleasure, but they shall continue and enjoy their jurisdiction according as their letters patent do enable them. *Lambarde*, 26. *Dalton*, *c.* 3. *s.* 6. 2. By charter.

And therefore if the king granteth to a mayor, or other head officer of a city or town corporate, and their successors, to be justices of peace in their city or town, and after maketh out a commission of the peace to others there, yet the authority and jurisdiction of the mayor remaineth good, because it was granted to them and their successors, and is not revocable at the king's pleasure, as the commission of the peace is. *Dalton*, *c.* 3. *s.* 6.

Neither doth the authority of such officers cease by the death of the king, or by his resignation. *Dalton*, *c.* 3. *s.* 10.

But such grants and charters may notwithstanding for some great and general defect of, or miscarriage in, the execution of the powers and authorities therein granted, be repealed, and the liberties seized. *Dalton*, *c.* 3. *s.* 6.

So also may the king upon reasonable cause moving him, lest there should be a failure of justice, grant concurrent commissions of the peace within such incorporations. *Ibid.*

But although a man be a mayor, yet it doth not follow that

he is a justice of the peace, for that must be by a particular grant in the charter *. 2 *Lord Raym.* 1030.

3. By commission.

3. The third sort of justices of peace are by commission in the king's name, made of common course under the great seal of *England*, and these are to be appointed by the discretion of the lord chancellor, or lord keeper of the great seal, according to the before-mentioned statute of 2 *Hen.* 5. *stat.* 2. c. 1. † Except within the county palatine of *Lancaster*, where the justices of peace are to be made and ordained by commission under the king's usual seal of *Lancaster*. *Dalton*, c. 3. *s*. 7. 27 *Hen.* 8. *c*. 24. *s*. 5.

And the constituting justices of peace is now inherent in and inseparable from the crown; it being enacted by 27 *Hen.* 8. c. 24. *s*. 2, that no person whatsoever shall have authority to make any justices of peace; but that all such ministers shall be made by letters patent under the king's great seal ‡, in the name and by authority of the king and his heirs, kings of this realm.

And the form of the commission § is as follows:

The form of the commission.

George the Third, *by the grace of God, of* Great Britain France *and* Ireland *king, defender of the faith, and so forth, to* A B, C D, &c. *greeting.*

*Know ye that we have assigned you jointly and severally and every one of you our justices to keep our peace in our county of* W, *and to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles in our said county (as well within liberties as without) according to the force, form and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done according to the form of those ordinances and statutes; and to cause to come before you, or any of you, all those who to any one or more of our people concerning their bodies, or the firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour, toward us and our people; and if they shall refuse to find such security, then*

* However, he hath in many cases the same authority as a justice of peace under the words of particular acts of parliament, as in respect of alehouses, gaming-houses, soldiers, and divers other matters.

† See p. 116. supra.

‡ Except within the county palatine of *Lancaster*, as before observed.

§ This form was settled by the judges about the 33d year of queen *Eliz*. *Hawk*. c. 8. *s*. 22.

*them in our prisons until they shall find such security to cause to be safely kept.*

*We have also assigned you, and every two or more of you* * *(of whom any one of you the said* A B, C D, *&c. we will shall be one) our justices to inquire the truth more fully, by the oath of good and lawful men* † *of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings* ‡, *inchantments, sorceries, arts magick* §, *trespasses, forestallings, regratings, ingrossings, and extortions whatsoever; and of all and singular other crimes and offences, of which the justices of our peace may or ought lawfully to enquire, by whomsoever and after what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted; and also of all those who in the aforesaid county in companies against our peace in disturbance of our people with armed force have gone or rode, or hereafter shall presume to go or ride, and also of all those who have there lain in wait, to maim or cut, or kill our people; and also of all victuallers, and all and singular other persons, who, in the abuse of weights or measures, or in the selling of victuals, against the form of the ordinances and statutes, or any one of them therefore made for the common benefit of* England, *and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt: and also of all sheriffs, bailiffs, stewards, constables, keepers of gaols and other officers, who in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county: and of all and singular articles and circumstances, and all other things whatsoever, that concern the premises or any of them, by whomsoever, and after what manner soever, in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; and*

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* Here beginneth the second part of the commission or the second assignment: all the business within such assignment belongeth to the sessions of the peace. *Dalton*, *c.* 5.

And from the above words it followeth that two justices may hold a sessions, but that one justice cannot. *Cromp.* 6, 7.

† That is, by a jury of the county.

‡ *Poisonings.*] The word in the Latin commissions was *veneficiis*, which may be rendered in English either *poisonings*, or *witchcrafts*: but from the words which immediately follow, and as *poisonings* are clearly included in the preceding word *felonies*, which comprehends every species of felonious homicide, it seems that the word *veneficiis* originally intended *witchcrafts*, rather then *poisonings*, and in that sense it was taken in the last edition of *Dalton*, and by *Shaw*.

§ For the punishment inflicted on persons pretending to use such arts, see title FORTUNE-TELLERS.

*to inspect all indictments whatsoever so before you or any of you taken or to be taken, or before others late our justices of the peace in the aforesaid county made or taken, and not yet determined; and to make and continue processes thereupon, against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted; until they can be taken, surrender themselves, or be outlawed: And to hear and determine all and singular the felonies, poisonings, inchantments, sorceries, arts magick, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes of* England, *as in the like case it has been accustomed, or ought to be done; and the same offenders, and every of them, for their offences, by fines, ransoms, amerciaments, forfeitures and other means, as according to the law and custom of* England, *or form of the ordinances and statutes aforesaid, it has been accustomed, or ought to be done, to chastise and punish.*

*Provided always, that if a case of difficulty, upon the determination of any of the premises, before you, or any two or more of you, shall happen to arise*; then let judgment in no wise be given thereon, before you, or any two or more of you; unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county.*

*And therefore we command you and every of you, that to keeping the peace, ordinances, statutes, and all and singular other the premises, you diligently apply yourselves; and that at certain days and places, which you, or any such two or more of you as is aforesaid, shall appoint for these purposes, into the premises ye make enquiries; and all and singular the premises hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of* England: *Saving to us the amerciaments and other things to us therefrom belonging.*

*And we command by the tenor of these presents our sheriff of* M, *that at certain days and places, which you, or any such two or more of you, as is aforesaid, shall make known to him, he cause to come before you, or such two or more of you, as aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth of the matter in the premises shall be the better known and inquired into.*

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* That is, a difficulty in point of law. *Crom.* 6.
Yet, saith *Lambarde*, if they list to proceed without the judges' advice, their judgment is not void, but it standeth good and effectual, until it be reversed by a superior court. *Lambarde*, 50.

*Lastly, we have assigned you the aforesaid* A B, *keeper of the rolls of our peace in our said county. And therefore you shall cause to be brought before you and your said fellows at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected and by a due course determined as is aforesaid.*

*In witness whereof we have caused these our letters to be made patent.* Witness ourself at Westminster, &c.

Formerly it was customary to appoint only a select number of justices, eminent for their skill and discretion, to be of the quorum; but now the practice is to advance almost all of them to that dignity, naming them all over again in the quorum clause, except perhaps only some one inconsiderable person for the sake of propriety. 1 *Black. Com.* 351. — Justices of the quorum.

As the office of these justices is conferred by the king, so it subsists only during his pleasure; and it is determinable by divers means, but more usually by the following: 1 *Black. Com.* 353. *Dalton*, c. 3. s. 8. — How the commission is determined.

*First;* by the death of the king, or by his resignation of his crown: for by the commission he maketh them *justiciarios nostros*, *our* justices; so that he being once dead, or having given over his crown, they are no more his justices, and the justices of the next prince they cannot be, unless it shall please him afterwards so to make them. *Lambarde*, 71. *Dyer*, 165. *a*. *Dalton*, c. 3. s. 8. — 1. By the death of the king.

But by 1 *Ann. st.* 1. c. 8. s. 2, no patent or grant of any office or employment shall determine by the king's death or demise but shall continue in force for six months after, unless in the mean time made void by the successor.

*Secondly;* by express writ under the great seal discharging any particular person from being any longer justice. 1 *Black. Com.* 353. *Dalton*, c. 8. s. 9. — 2. By writ under the great seal.

*Thirdly;* by superseding the commission by writ of *supersedeas*, which suspends the power of all the justices, but does not totally destroy it: seeing it may be revived again by another writ, called a *procedendo.* 1 *Black. Com.* 353. *Dalton*, c. 8. s. 9. — 3. By a supersedeas.

*Fourthly;* by implication, as by making other commissioners of the same kind, and within the same limits, leaving out the ancient commissioners names. *Dalton*, c. 3. s. 9. — 4. By a new commission.

Which virtually, though silently, discharges all the former justices that are not included therein; for two commissions cannot subsist at once *. 1 *Black. Com.* 353.

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* But the former commissioners must have knowledge of such new commission; for this determination of the old commission groweth not immediately, by making the new commission, but either by giving

5. By accession to the office of sheriff. *Fifthly*; by the accession of another office: as where a justice of peace is chosen to be sheriff of the same county. *Dalton*, c. 3. s. 10.

For by 1 *Mar. sess.* 2. c. 8, no *sheriff shall exercise the office of a justice* of the peace, during the time that he acts as sheriff.

The reason whereof, according to *Dalton*, seems to be, that the sheriff is a minister, and a justice of peace is a judge; and the one is as necessary as the other: and besides, the office of a judge being to command, and of a minister to execute the commandment, if one man shall be both judge and minister, it would follow that the sheriff ought to command himself, or that he should as an officer serve his own precept made as a justice or judge, which cannot be. *Dalton*, c. 3. s. 10.

Or coroner. Also if a justice of peace be made a coroner of the county, this it seems is a discharge of his authority of justice. *Dalton*, c. 3. s. 10. 1 *Black. Com.* 358.

Formerly it was also thought, that if a man was named in any commission of the peace, and had afterwards a new dignity conferred upon him, that this determined his office; he no longer answering the description of the commission. 1 *Black. Com.* 353.

But now by 1 *Ed.* 6. c. 7. s. 4, although any justice of peace be made duke, archbishop, marquis, earl, viscount, baron, bishop, knight, justice of one bench or the other, or serjeant at law, yet he shall remain justice, and have authority to execute the same.

## *IV. Qualification and oaths.*

Qualification. As to the qualifications of justices of peace, the statute laws have respect to the manners and ability of them all, and direct them to be of the best reputation and most worthy men in the county. *Lambarde*, 30. 1 *Shaw*, 9. 1 *Black Com.* 352.

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special notice thereof unto the old commissioners; or else by and after the reading or proclaiming of the same at the assizes, sessions of the peace, or at the full county; or else by holding of some open sessions by virtue of such new commission. *Dalton*, c. 3. s. 9.

And in all places where any ancient commission of the peace is determined by a new, yet no process or suit depending before the old commissioners shall be discontinued thereby. *Dalton*, c. 3. s. 9.

For by 11 *Hen.* 6. c. 6, no indictment, plea, suit, or process, shall be discontinued by a new commission; but the justices in the new commission, after they shall have the records of the same pleas and processes before them, shall have power to continue the said pleas and processes, and to hear and finally to determine the same as the former justices might have done.

And the statute 13 *Ric.* 2. *c.* 7, orders them to be of the most sufficient knights, esquires, and gentlemen of the law.

Also by stat. 2 *Hen.* 5. *st.* 1. *c.* 4. and *st.* 2. *c.* 1, they must be resident in their several counties.

And because contrary to these statutes, men of small substance had crept into the commission, whose poverty made them both covetous and contemptible, it was enacted by 18 *Hen.* 6. *c.* 11, that no justice should be put in commission if he had not lands to the value of 20*l.* *per ann.* 1 *Black. Com.* 352.

But the rate of money being greatly altered since that time, it is now enacted by 18 *Geo.* 2. *c.* 20, that no person shall be capable of being or acting as a justice of the peace for any county, who shall not have in law or equity, for his own use in possession, a freehold, copyhold, or customary estate, for life, or for some greater estate, or an estate for some long term of years, determinable upon one or more lives, or for a certain term originally created for twenty-one years or more, in lands, tenements, or hereditaments, in *England* or *Wales*, of the clear yearly value of 100*l.** above what will discharge all incumbrances affecting the same, and all rents and charges payable out of the same, or who shall not be intitled to the immediate reversion or remainder of lands leased for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, upon reserved rents of the clear yearly value of 300*l.* *s.* 1.

But no attorney, solicitor, or proctor, shall be a justice of the peace for any county during the time he shall continue in the practice of that business; and if he take upon himself that office, or do any act, he shall forfeit 100*l.* one moiety to the king and the other to him who will sue in any court of record at *Westminster* †. 5 *Geo.* 2. *c.* 18. *s.* 2, 3.

On renewing the commission of the peace, which generally happeneth as any person is newly brought into the same, there cometh a writ of *dedimus potestatem*, directed out of *Chancery*, to some ancient justice (or other) to take the oath of him which is newly inserted ‡, which is usually in a schedule annexed; and to certify the same into that court, at such a day as the writ commandeth, unto which oath are usually annexed the oaths of allegiance and supremacy. *Lambarde*, 53. Oaths

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* This qualification is almost an equivalent to the 20*l.* *per ann.* required in *Henry* the sixth's time. 1 *Black. Com.* 353.

† But this does not extend to any city, town, cinque-port, or liberty, having justices of peace within their limits by charter, commission, or otherwise. 5 *Geo.* 2. *c.* 18. *s.* 4.

‡ So when any justice intends to act under the commission, he sues out a like writ of *dedimus potestatem*. 1 *Black. Com.* 352.

Of office. The form of the oath of office is at this day as follows:

*Ye shall swear that as justice of the peace in the county of* M, *in all articles in the king's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning wit, and power, and after the laws and customs of the realm and statutes thereof made: And ye shall not be of counsel of any quarrel hanging before you: And that ye hold your sessions after the form of the statutes thereof made: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures that shall fall before you, ye shall cause to be entered without any concealment (or embezzling) and truly send them to the king's exchequer. Ye shall not let for gift or other cause, but well and truly ye shall do your office of justice of the peace in that behalf: And that you take nothing for your office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute. And ye shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bailiff of the said county, or other the king's officers or ministers, or other indifferent persons, to do execution thereof. So help you God.*

Qualifications. And by 18 *Geo.* 2. c. 20, no person shall be capable of acting as a justice of the peace, who shall not, before he acts, at some general or quarter sessions for the county or division for which he intends to act, first take and subscribe the oath following; viz.

I A B *do swear, That I truly and* bona fide *have such an estate, in law or equity, to and for my own use and benefit, consisting of* ——— (specifying the nature of such estate, whether message, land, rent, tithe, office, benefice, or what else) *as doth qualify me to act as a justice of the peace for the county, riding, or division of* ——— *according to the true intent and meaning of an act of parliament made in the eighteenth year of the reign of his majesty king* George *the Second, intituled,* An act to amend and render more effectual an act passed in the fifth year of his present majesty's reign, intituled, *an act for the further qualifications of justices of the peace; and that the same* (except where it consists of an office, benefice, or ecclesiastical preferment, which it shall be sufficient to ascertain by their known and usual names) *is lying or being, or issuing out of land, tenements, or hereditaments, being within the parish, township, or precinct of* ——— *or in the several parishes, townships or precincts of* ——— *and* ——— *in the county of* ——— *or in the several counties of* ——— *and* ———(as the case may be.)

Which oath, so taken and subscribed, shall be kept by the clerk of the peace among the records of the sessions. *s.* 1.

And such clerk of the peace shall, on demand, forthwith deliver an attested copy to any person paying for the same two shillings, which being proved to be a true copy, shall be admitted in evidence on any issue in any suit brought on this act. *s.* 2.

And any person who shall act as a justice *without having taken and subscribed the said oath, or without being qualified* according to this act, shall, for such offence, forfeit one hundred pounds, one moiety to the poor of the parish in which he most usually resides, and the other moiety to such person who shall sue for the same (within six months, *s.* 11.) to be recovered, with full costs, in any court of record at *Westminster. s.* 3.

Penalty on acting, not being qualified, or without taking the oath.

And in every such suit the proof of qualification shall lie on the person against whom the same is brought. *s.* 3.

And if the defendant intends to insist on any lands not contained in such oath, he shall at or before the time of pleading, deliver to the plaintiff or his attorney a notice in writing specifying such lands, and the parish and county wherein the same are (offices and benefices excepted, which it shall be sufficient to ascertain by their usual names); and if the plaintiff shall thereupon not proceed any further, he may, with leave of the court, discontinue on payment of costs. *s.* 4.

And upon trial no lands not contained in such oath and notice shall be allowed as part of the qualification. *s.* 5.

Where the lands contained in the said oath or notice are together with other lands liable to any charges, rents, or incumbrances, for the purposes of this act, such lands shall be deemed chargeable only so far as the other lands are not sufficient to pay. *s.* 6.

And where the qualification or any part thereof consists of rent, it shall be sufficient to specify in such oath or notice so much of the lands out of which such rent is issuing, as shall be of sufficient value to answer such rent. *s.* 7.

And in case the plaintiff or informer shall discontinue otherwise than aforesaid, or be nonsuit, &c. the person against whom such action is brought shall recover treble costs. *s.* 8.

This act shall not extend to any city, town, cinque-port, or liberty, having justices of peace within their limits. *s.* 12.

Exceptions of particular places; of particular persons.

Nor to any peer or lord of parliament, or to the lords of the privy council, justices of either bench, barons of the *Exchequer*, attorney or solicitor-general, the justices of the great sessions of *Chester* and *Wales*, or to the eldest son or heir apparent of any peer or lord of parliament, or of any person qualified to serve as a knight of a shire. *s.* 13.

Nor to the officers of the board of *Green-cloth*, or the commissioners, and principal officers of the navy, or the two un-

der secretaries in each of the offices of principal secretary of state or the secretary of *Chelsea College*, where they usually have been justices. *s.* 14.

Nor to any of the heads of colleges or halls in the universities of *Oxford* and *Cambridge*; or to the vice-chancellor of either, or to the mayor of *Oxford* or of *Cambridge*; but they may be justices in the counties of *Oxford*, *Berks*, and *Cambridge*, and the cities and towns within the same, as heretofore. *s.* 15.

Oaths of allegiance and supremacy.

Also every justice shall within six calendar months take the oaths of allegiance, and supremacy, and abjuration, and make and subscribe the declaration against transubstantiation in one of the courts at *Westminster*, or at the general or quarter sessions of the place where he shall be or reside, as other persons qualifying for offices. 1 *Geo.* 1. *st.* 2. *c.* 13. *s.* 2. 2 *Geo.* 2. c. 31. *s.* 3, 4. 9 *Geo.* 2. *c.* 26. *s.* 3. 25 *Car.* 2. c. 2. *s.* 2.

Oaths only to be taken once in one king's reign.

*But no justice is obliged to take and subscribe the oaths more than once in one king's reign.* For it is enacted by 7 *Geo.* 3. c. 9, that all persons who have been or shall be appointed justices by any commission granted by his present majesty, and have taken, or who shall take, THE OATHS OF OFFICE *of a justice of the peace before the clerk of the peace or his deputy, and who shall have taken and subscribed, or shall take and subscribe at some session* THE OATH required by 18 *Geo.* 2. c. 20, and all persons who shall be appointed justices by any commission which shall be granted after his majesty's demise by any of his successors, and shall have after the issuing the first commission whereby such persons shall be appointed justices in the reign of any succeeding king, taken and subscribed the said oaths—shall not be obliged during the reign of his present majesty, or during any future reign, in which such oaths shall have been so taken and subscribed as aforesaid, to take and subscribe the same oaths by reason of such persons being again appointed justices by any subsequent commission granted during any such reign.

*And in the indemnity act which passes almost every session of parliament, there is generally inserted a clause to indemnify such persons as shall have omitted to take the oaths; provided they qualify within a time limited in such act.*

### *V. Their authority and jurisdiction pursuant to the commission of the peace, and the general statutes relating to them.*

Their authority in general.

It seems certain that by virtue of the commission they may execute all statutes whatsoever, made for the better keeping of the peace; and consequently as well those made before the reign of *Ed.* 3, in whose time justices of peace were first instituted, as those made since that time. 2 *Hawk.* c. 8. *s.* 28.

And besides the statute relating to the peace, there are also many other statutes, which are not specified in the commission, and yet are committed to the charge and care of the justices of the peace, by the express words of such statutes; and all such statutes are to them a sufficient warrant and commission of themselves, although they be not recited in the commission, and are to be executed by them according as the same statutes themselves do severally prescribe and set down. *Dalton*, c. 5.

Having premised this, it will be proper to consider, FIRST, *what authority they have in relation to treason, præmunire, and misprision of treason:*—SECONDLY, *what in relation to felonies:*—THIRDLY, *what in relation to inferior offences:*—FOURTHLY, *how far they have power to proceed on indictments not taken before themselves:*—FIFTHLY, *by what justices the jurisdiction must be exercised:* SIXTHLY, *how far a justice of a county may act out of it, or within a liberty:*—SEVENTHLY, *their power to administer oaths.*

FIRST, *what authority they have in relation to treason, præmunire and misprision of treason.*]—It seems to be clearly agreed, that none of these offences, are within the letter of the commission; and that therefore justices of the peace have not jurisdiction to hear and determine treason, præmunire, or misprision of treason. 1 *Hale's Hist.* 305. 350. 372. 580. 2 *Hawk.* c. 8. s. 34. Their authority in relation to treason.

But as these offences are against the peace of the king and of the realm *, any justice of the peace may, either upon his own knowledge or the complaint of others, cause any person to be apprehended for any such offence, and such justice may take the examination of the person so apprehended, and the information of all those who can give material evidence against him, and put the same in writing, and also bind over such who are able to give any such evidence to the *King's Bench* or gaol delivery, and certify his proceedings to the same court to which he shall bind over such informers; and this doctrine seems to be established by constant practice, especially since the statutes of 1 & 2 *Phil.* and *Mary*, c. 13. and 2 & 3 *Phil.* and *Mary*, c. 10 †, which directing justices of peace to proceed in this manner against persons brought before them for felony, seem to give them a discretionary power of proceeding in like manner against persons accused of the above-mentioned offences. 2 *Hawk.* c. 8. s. 34.

Also, by some acts of parliament, justices of peace may take indictments of particular treasons; but those presentments they must certify in the *King's Bench* or gaol delivery, as the case

* And more especially, as *Hale* observes, as every treason includes a felony. 1 *Hale's Hist.* 580.

† See the title EXAMINATION.

shall require, as upon the statute of 5 *Eliz. c.* 1, for maintaining the authority of the see of *Rome*, 13 *Eliz. c.* 2, for bringing in bulls for absolution, *agnus dei*, &c. 23 *Eliz. c.* 1, for withdrawing and reconciling, or being withdrawn from the king's allegiance *. 2 *Hale's Hist.* 44.

Their authority in felonies.

SECONDLY, *what authority justices of peace have in relation to felonies.*]—It seems to have been a matter of some doubt, whether justices of peace, as such, have power to hear and determine felonies; and this doubt seems to have arisen from the general words of 34 *Ed.* 3. *c.* 1 †, which are express, that the persons assigned to keep the peace shall have powers, among other things, to hear and determine felonies. 2 *Hale's Hist.* 43. 2 *Hawk. c.* 8. *s.* 33. 3 *Bacon's Abr. tit. Justices of Peace* (E. *s.* 3).

But it seems to be now settled, that justices of peace have no power to hear and determine felonies unless they be authorised so to do by the express words of their commission; and that their jurisdiction to hear and determine felonies ‡ and trespasses is by force of the second *assignavimus* in their commission, which gives them, or two of them, whereof one is of the quorum, power to hear and determine felonies. 2 *Hale's Hist.* 43. 2 *Hawk. c.* 8. *s.* 33.

And hence it hath been adjudged, that the caption of an indictment of trespass before justices of the peace, without adding, *and also to hear and determine divers felonies*, is naught, because they ought to shew that they had an appointment to hear and determine, and the court will not intend that they have such power. 1 *Strange*, 442, 3.

And it is certain that such a clause in the commission of justices of the peace, *to hear and determine*, gives them no jurisdiction over an offence which by statute is specially appointed to be determined *by justices of oyer and terminer*, because such justices shall be intended to mean such justices of *oyer and terminer* only, which properly and usually are so called, and not those who are distinctly known by another name §. 2 *Hawk. c.* 8. *s.* 33.

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* See the title TREASON.

† See p. 116. supra.

‡ Although the commission doth not mention *murders* and *manslaughters* by express name, but only *felonies* generally, yet by such general word they have power to hear and determine murder and manslaughter, and also may take an indictment of *se defendendo*. 2 *Hale's Hist.* 46.

§ And from hence it follows, that justices of peace have no power to take an indictment upon stat. 5 *Eliz. c.* 14, concerning forgery (see vol. ii. p. 576), nor on any other statute which specially limits the jurisdiction of determining any other felony to other justices of a particular denomination. 2 *Hawk. c.* 8. *s.* 33.

Yet inasmuch as all felonies include in them a breach of the peace, and 2 & 3 *Phil.* and *Mary*, c. 10 *, which directs justices of peace to take the examinations of all such persons as shall be committed by them for felony, seems to suppose them to have a general power of committing all persons *accused of any kind of felony*; and the general practice has always been agreeable hereto, it is said, that *justices of peace may take the examination of persons brought before them* FOR ANY KIND OF FELONY whatsoever, and commit them to prison; and also take the information of the prosecutors upon oath, and bind them over to prosecute; and to commit those who shall refuse to be so bound, if it appear that they can give material evidence. 2 *Hawk.* c. 8. s. 33.

But though justices of peace, by force of their commission, may have authority to hear and determine other felonies, yet it hath been generally thought advisable for them to proceed no farther than as above, in relation to murder or manslaughter, or any other offences from which the benefit of clergy is taken. 2 *Hale's Hist.* 46. 2 *Hawk. c.* 8. *s.* 33.

And this, says my lord *Hale*, is for two reasons;—1. By reason of the monition and clause in their commission; *in cases of difficulty to expect the presence of the justices of assize.*

2. By reason of the direction of the statute 1 & 2 *Phil.* and *Mary*, c. 13 †, which directs justices of the peace, in case of manslaughter and other felonies, to take the examination of the prisoner, and the information of the fact, and put the same in writing, and then to bail the prisoner, if there be cause, and to certify the same, with the bail, at the next gaol delivery; and therefore in cases of great moment they bind over the prosecutors, and bail the party, if bailable, to the next gaol delivery.

But in smaller matters, as *petty larceny*, and some cases, they bind over to the sessions; but this is but in point of discretion and convenience, not because they have not jurisdiction of the crime. 2 *Hale's Hist.* 46.

And an inquisition of *self-murder*, if the body cannot be seen, and so not inquired of by the coroner ‡, may be taken before justices of the peace, for it is a felony, and within the extent of their commission. 1 *Hale's Hist.* 414.

THIRDLY; *what authority justices of peace have in relation to inferior offences.*] The powers given to justices of peace are so various, and extend to such a multiplicity of cases, that it would be impossible in this place to enumerate all the offences in respect whereof they have jurisdiction; and were it otherwise, it would be unnecessary to do so, as such matters are distinctly treated of under the several titles contained in this work.

Their authority in inferior offences.

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* See title EXAMINATION. † Ibid. ‡ See title CORONER.

It is therefore only intended in this place to treat of their general authority in regard to inferior offences; and herein it is to be observed, that by the before-mentioned statute of 34 *Ed.* 3. c. 1*, and also by the express words of their commission, they are empowered to hear and determine *all trespasses.* 2 *Hawk.* c. 8. s. 34.

This is a word of a very general extent, and in a large sense not only comprehends all inferior offences, which are properly and directly against the peace, as assaults and batteries, and such like, but also all others which are so only by construction, as all breaches of the law in general are said to be. 2 *Hawk.* [c. 8. s. 38.

Yet neither perjury nor forgery at common law, nor any other such like offences, which do not directly tend to cause a *personal* wrong or open violence, are cognizable by them, unless it be by the express words of their commission, or some statute. *Salkeld*, 406. *Cromp.* 120. *Lambarde*, b. 1. c. 12. 2 *Hawk.* c. 8. s. 38.

For as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass*, in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only in the said statute and commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and common night-walking, and haunting bawdy-houses, and such like offences. 2 *Hawk.* c. 8. s. 38.

And justices of peace by virtue of the above-mentioned statute of 34 *Ed.* 3. c. 1, seem to have a jurisdiction over barretors and such like offenders, whether they be mentioned in their commission or not. 2 *Hawk.* c. 8. s. 39.

Also it seems clear that justices of peace have jurisdiction of all inferior crimes within their commission, whether such crimes be mentioned in any statute concerning them or not; for that all such crimes are either directly, or at least by consequence and judgment of law, against the peace. 2 *Hawk.* c. 8. s. 39.

And upon this ground, principally, *Hawkins* apprehends it to have been determined, that they may take an indictment of extortion †. 2 *Hawk.* c. 8. s. 39.

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* See p. 115, supra.

† For the justices do not seem to have any express power given them by any statute in regard to *extortions*; which are thus described by *Crompton.*—Extortions intend excessive wrongs; for wrong done by any one is properly trespass; but excessive wrong done by any one is called extortion; and this is more properly in officers; as sheriffs, mayors, bailiffs, escheators, and other officers whatsoever (as well spiritual as temporal) who by colour of their office have done great oppression and excessive wrong to the king's subjects, in taking excessive rewards or fees for doing their offices. *Cromp.* 8. See also the title EXTORTION.

FOURTHLY; *how far they have power to proceed on indictments not taken before themselves.*] It is certain that subsequent justices of the peace may proceed upon indictments taken before their predecessors, which depends upon the statute 11 *Hen.* 6. c. 6, which is further confirmed by 1 *Ed.* 6. *c.* 7. *s.* 6, the former of which reciting that pleas and processes upon indictments before justices of the peace had often been discontinued by making of new commissions of the peace, ordains *that such pleas, suits, and processes shall not be discontinued by new commissions of the peace, but stand in force:* and that the new justices, after they have the records of the same pleas and processes before them, may continue and finally hear and determine the same.

The authority of subsequent justices to proceed on indictments taken before their predecessors

But justices of peace have no power to proceed on indictments taken before a coroner, or before justices of oyer and terminer, or gaol delivery, or to deliver persons suspected, by proclamation, before an inquisition be taken*; but if an inquisition be taken, and an *ignoramus* found, they may deliver him, as it seemeth. 2 *Hale's Hist.* 46. 2 *Hawk. c.* 8. *s.* 31.

But if an indictment be taken before the sheriff in his torn, by the stat. 1 *Ed.* 4. *c.* 2, these indictments are to be delivered to the justices of peace, at their next sessions, and they may proceed on those presentments. 2 *Hale's Hist.* 46.

FIFTHLY; *by what justices the jurisdiction must be exercised, and herein by what name such justices are to be described.*] Every single justice has regularly a jurisdiction through the whole county, which he alone may exercise for the preservation of the peace; and this jurisdiction he has by virtue of his commission, which constitutes him a justice of peace; but the power of hearing and determining offences is by the commission given to two or more (1 Qu.); and therefore if two justices (1 Qu.) be empowered to do a thing, it ought to appear that one was of the *quorum*. 2 *Hale's Hist.* 50. 5 *Mod. Rep.* 322. *Comber.* 200. 2 *Lord Raym.* 1238. 2 *Strange*, 974.

The powers of individual justices.

But by 26 *Geo.* 2. *c.* 27, no act, order, adjudication, warrant, indenture of apprenticeship, or other instrument done or executed by two or more justices, which doth not express that one or more of them is of the *quorum* (although the statutes respectively require that one of the justices shall be of the *quorum*), shall be impeached, set aside, or vacated for that defect only.

And by 7 *Geo.* 3. *c.* 21, in cities, boroughs, towns corporate, franchises and liberties, which have only one justice of the *quorum*, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments done or executed by

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* But justices of gaol delivery may.

two or more justices qualified to act therein, shall be valid, although neither of the said justices shall be of the *quorum.*

Their authority to be strictly pursued.

The authority of a justice of peace is to be used according to the force, form, and effect of the statute. *Comyns's Dig. tit. Jus. of Peace*, (B. 1.)

But the justices cannot proceed for an offence against a statute which creates a new offence not named in the commission; or by which no jurisdiction is given to justices of peace. *Comyns's Dig. tit. Jus. of P.* (B. 1.) 2 *Strange*, 1256.

And where a special authority is given to justices out of sessions, it ought to appear in their orders, that that authority was exactly pursued *. 2 *Salk.* 475.

Where two are to act together.

Thus where an act of parliament empowers two justices finally to hear and determine any offence; or requires two of them to do any judicial act, they must both be present at the execution of it, as in making an order of bastardy, adjudging the settlement of a pauper, appointing overseers of the poor, allowing the indentures of a parish apprentice, and the like; for in all *judicial* acts they are to exercise a discretion; and in order thereto, they ought both to be present, and confer together for the purpose of a communication on the subject matter, on which they are to determine. *Salk.* 478, 488. *Lord Raym.* 55. *Black. Rep.* 1017. *Burrows's Set. Cas.* 136. 3 *Term Rep.* 38. 308 †.

So where two justices are enabled to bail a person, they ought both to be present to do it, and not one of them first to sign the recognizance, and then send it to another ‡.

And a single justice cannot bail a person that is committed by order of the sessions; for he that bails must have as high a power as he who commits. 1 *Keble*, 897, 807.

Where they have discretionary powers.

Where a statute refers a matter to the discretion of the justice, it ought to be a *sound discretion*, conformable to law and reason. 4 *Co.* 100. a.

Where a thing is to be done by the *next* justices.

And where a statute says the next justice, it must be the next and others without him cannot intermeddle. 2 *Keble*, 559. 1 *Sand.* 263.

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* And to this end, it is recommended by *Dalton*, as most of the business of a justice of the peace consisteth in the execution of divers statutes, which cannot be sufficiently abridged, but that they will come short of the substance and body thereof, that therefore it will be safest for the justice to have an eye to the statutes at large, and thereby to take their further and better directions for their whole proceedings: Abridgments being, as lord *Coke* observes, of good and necessary use to serve as tables, but not to ground any opinion, much less to proceed judicially upon them. *Dalton*, c. 137.

† See also vol. i. p. 133. 330.

‡ For this see the act 1 and 2 *Phil.* and *Mary*, c. 13. in vol. i. p. 261. Also 2 *Bacon's Abr. tit. Jus. of P.* (F. s. 5.)

But others may join with him ; and where it says the justices of peace in or near the place, then any justice of peace in the county will serve. *Salk.* 477, 2 *Keble*, 559.

So if any authority is given to one justice, two or more may execute it; *Dalton*, c. 6. *s.* 8.

To make a record of their proceedings.

And in all cases where justices of peace may hear and determine out of sessions (viz. on their own view, or confession, or oath of witnesses), the justices ought to make a record in writing, under their hands, of all the matters and proofs. *Dalton*, c. 115. *s.* 2.

And it is the duty of the justices, and they ought in every instance to draw up the conviction in form, and return the original record thereof to the sessions, whether the party appeals or not, or whether an appeal is or is not given, that the crown may not be deprived of its share of forfeitures. 2 *Term Rep.* 285.

Estreating fines.

For, if upon such conviction the offender is to be fined to the king, then the justices are to estreat such fine, and to send the estreat into the *Exchequer*, whereby the barons of the *Exchequer* may cause the said fine or forfeiture to be levied for the king's use. *Dalton*, c. 115. *s.* 2.

Issuing a warrant for offences cognizable only in sessions.

It seems that anciently no one justice could legally make out a warrant for an offence against a penal statute, or other misdemeanor, cognizable only by a sessions of two or more justices, for that one justice hath no jurisdiction of such offence, and regularly those only who have jurisdiction over a cause can award process concerning it; yet the long, constant, universal and uncontrolled practice of justices of the peace seems to have altered the law in this particular, and to have given them an authority in relation to such arrests, not now to be disputed. 2 *Hawk.* c. 13. *s.* 16.

General power to issue a warrant.

Also it seems clear, that wherever a statute gives to any one justice of peace a jurisdiction over any offence, or a power to require any person to do a certain thing ordained by such statute, it impliedly gives a power to every such justice to make out a warrant. 2 *Hawk.* c. 13. *s.* 15.

But in ordinary cases, where the offence does not amount to felony, or subject the offender to corporal punishment, it seems to be most advisable to issue a summons in the first instance, and not a warrant, unless the statute which gives the justices jurisdiction directs otherwise.

Superseding their own proceedings.

In the case of the parishes of *Pancras* and *Rumbold*, *Tr.* 2 *Geo.* 1, where two justices reciting that they were surprised, superseded their former order for the removal of a pauper, and commanded the churchwardens to return the same to be cancelled—*The Court* held such supersedeas to be well sent by the justices, to prevent the charge of an appeal. 1 *Strange*, 6.

But the legality of the practice of one magistrate's grant-

ing a supersedeas to the warrant of another in bailable offences is very doubtful. 2 *Term Rep.* 195.

And it is clear, that if they take upon themselves to supersede a warrant of a justice of peace having competent jurisdiction before the matter has been inquired into at all, and without having any evidence before them; this is taking upon them to prejudge that the justice granting the warrant has done wrong, and is a palpable and gross abuse of their office, for which the court will grant an information. 2 *Term Rep.* 195.

Justices interested in the matter.

Justices of the peace ought not to execute their office in their own cause; but they ought to cause the offenders to be convened, or carried before some other justice, or desire the aid of some other justice being present. *Dalton*, c. 173. *Comyns's Dig. tit. Jus.* (I. 3.)

And upon this principle, where a justice of peace was surveyor of the highways, and an order was made at the sessions in a matter which concerned his office, and he joined in making the order, and his name appeared in the caption, it was held bad, and for that reason quashed. 2 *Salkeld*, 607.

For where a man is a party he cannot be a judge indifferent *. *Dalton*, c. 173.

But if a justice is publicly assaulted †, or abused to his face, or his authority otherwise contemned while in the execution of his office, and no other justice be present, it seems that he may make himself judge, and immediately commit such offender until he shall find sureties for the peace or good behaviour, as the case shall require; yet if another justice be present, his assistance should be required to punish the offender. 1 *Shaw's Jus.* 19. 1 *Strange*, 421. *Hawk.* 8*vo. ed. n.* 4.

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* And *Holt* said, *Mic.* 10 *Will.* 3, that the mayor of *Hereford* was laid by the heels, for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment, though he by the charter was sole judge of the court. 1 *Salk.* 296.

And it is not only unjust, but, as *Coke* says, not safe for any man, be he never so learned, to be of counsel with himself in his own cause, but to take advice of other great and learned men; and the reason he gives is, for that men are generally more foolish in their own concerns than in those of other people. *Co. Lit.* 377.

† *In the case of the* K. *v.* Symonds, *E.* 9 *Geo.* 2, it was doubted whether a person could on an information justify the assaulting and beating a justice of the peace in the execution of his office, the justice having struck first, and lord *Hardwick* held that he might justify it; for though a magistrate is protected by the law whilst he is in the execution of his office, yet in such a case he forfeits that protection, by beginning a breach of the peace himself. *Cas. K. B. temp. Ld. Hard.* 240.

*Also doubts had arisen *, whether justices of peace might lawfully act in any case relating to the parishes to the rates and taxes whereof they were rated and chargeable ;* to remove which doubts it is enacted by 26 *Geo.* 2. *c.* 18, that it shall be lawful for every justice of the peace within his jurisdiction to execute every thing appertaining to his office, so far as the same relates to the laws concerning the poor, vagrants, highways, or parochial taxes, or rates, notwithstanding such justice is rated to or chargeable with the taxes within such parish or place affected by such act of such justice. *s.* 1.

But it is provided that this act shall not authorize any justice for any county or riding at large to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order or thing relating to the parish or place where such justice is so charged. *s. 3.*

And accordingly in the case of the *King* v. *Yarpole, Mic.* 31 *Geo.* 3. it was objected against an order of sessions made on an appeal from an order of removal, that three of the justices who voted and joined in such order of sessions, were rated in one of the contending parishes; and it was generally admitted that the order of sessions could not be supported. 4 *Term Rep.* 71.

**By what name such justices are to be described.**

As to the point, *by what name such justices are to be described*, it is observable that they are expressly commissioned by the name of *justices of peace*; and in no part of their commission are called by the name of keepers of the peace; yet inasmuch as by 18 *Ed.* 3. *c.* 2, which is one of the first statutes made concerning their institution, they are expressly called *keepers of the peace*, and the principal end of their office is for the keeping of the peace ; and their usual description in *certioraris*, is by the name of keepers of the peace, it hath been adjudged, that in the caption of an indictment, *keepers of the peace for our lord the king* is good without expressly naming them *justices of peace.* 1 *Hawk.* c. 8. *s.* 32.

Also it hath been resolved, that the description of justices of the peace, by the name of *justices of our lord the king to keep the peace*, is good without saying *the peace of our lord the king*; for that is necessarily implied. 2 *Hawk. c.* 8. *s.* 32.

Sixthly ; *how far a justice of a county may act out of it,*

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* These doubts were occasioned by the determination of the court of *King's Bench*, in the case of the parishes of *Great Charte* and *Kennington, Mic.* 16 *Geo.* 2, where an order of removal was quashed because one of the justices who made the order was an inhabitant of *Great Charte* at the time, and charged to the poor rate there. And the court then said, that no rule of law or reason was more established, than that a judge ought to stand disinterested. 2 *Strange*, 1173. *Burrows Sett. Cas.* 194.

*or within a liberty.*] Justices of the peace are to execute their authority as justices of the peace within the county wherein they are justices, and cannot regularly do a judicial act out of such county*. 2 *Hale's Hist.* 50. 2 *Hawk. c.* 8. *s.* 29.

Therefore an order of bastardy, or for payment of labourers wages made by them out of the county is not binding. 2 *Hawk. c.* 8. *s.* 29.

So also if a justice of peace live or be out of the county wherein he is justice, he cannot in general by his warrant fetch a person out of the county whereof he is justice to come before him in the county where he is. *Plowden*, 37. a. 2 *Hale's Hist.* 50.

But it seems that any justice may do a ministerial act out of the county, such as examining a party robbed, whether he knows the felons or not; according to the statute. *Cro. Car.* 211. *Jones*, 239.

Also by the better opinion, recognizances and informations *voluntarily* taken before them in any place are good; for those, says my lord chief justice *Hale*, are acts of voluntary jurisdiction, and may be done out of the county, as well as a bishop may grant administration, institution or orders out of his diocese. 2 *Hale's Hist.* 51.

But a justice of peace in general cannot imprison a person for not giving a recognizance, or commit a person for a crime, for these are acts of compulsory jurisdiction, which he cannot exercise out of his proper county. 2 *Hale's Hist.* 51.

*However, if the justice is in the commission, and acts for two or more adjoining counties, he may act for either of such counties, in a county where he is resident*; for it is enacted, by 28 *Geo.* 3. *c.* 49, that any justice acting as such, for *two or more counties, being adjoining counties*, may act as a justice in all matters concerning any or either *of the said counties*, and all acts of such justice, and any constable or other officer in obedience thereto, shall be as valid as if done in the county to which such acts more particularly relate; and all constables of the county to which such acts relate, are to obey the warrants of such justice, and to do their duties, under the pains to which any constable may be liable for neglect of duty: *provided* that such justice be personally resident in one of the said counties at the time of doing such act, and the warrants be directed in the first instance to the constable of the county to which the same more particularly relate. *s.* 1.

And it shall be lawful for any constable, or other peace officer, or any other person apprehending any person, *to con-*

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* And this rule holds also with regard to the justices within cities, boroughs, towns corporate, and like liberties. *See Dalton, c.* 6. *s.* 7.

*vey the person so apprehended to any justice, acting for the said county, and resident in such adjoining county*, and the said constables, and persons are required in such cases, so to act in all things as if the justice was resident within the county to which they belong; and all persons obstructing them in their offices, in the said county adjoining, shall be liable to the same penalties, as if the same had been committed in the county for which the said constables were appointed to act. *s.* 2.

And it shall be lawful for any sheriff, or person acting under his authority, constable, or peace officer, or other person lawfully taking into his custody any person offending against law, and whom he might convey to gaol, to convey the said person in custody into and through *any part of the said county adjoining*, in their way to such gaol or place of safe custody within the county, wherein such offence was done; and all persons escaping from such custody, or aiding such escape, or rescuing such person so in custody, shall be subject to the like penalties, as if the escape had happened in the county wherein such offence was done. *s.* 3.

*Also if a justice dwells in a city or precinct that is a county of itself within the county at large, he may act at his own dwelling house, or within any part of such precinct, for the county at large*; for it is enacted, by 9 *Geo.* 1. *c.* 7, that if any justice of peace shall dwell in any city or precinct, that is a county of itself, situate within the county at large, for which he shall be appointed a justice, though not within the same county, such justice may grant warrants, take examinations, and make orders for any matters, which one justice may act in, at his own dwelling house, though it be out of the county. *s.* 3.

*And as doubts had arisen on the construction of the above act*, it is further enacted, by 28 *Geo.* 3. *c.* 49, that it shall be lawful for any justice acting for any county at large, to act as such at *any place within any city, or precinct, being a county of itself, and situate within, surrounded by, or adjoining to such county at large*; and all acts done by such justice within such city shall be as valid as if done within the county at large. *s.* 4.

*Provided* that nothing herein shall give power to the justices for the counties at large to hold their quarter sessions in cities or towns that are counties of themselves. 9 *Geo.* 1. *c.* 7. *s.* 3.

Nor empower justices, sheriffs, bailiffs, constables, or any other peace officers of the counties at large, to act in any matters arising within cities or towns which are counties of themselves. 9 *Geo.* 1. *c.* 7. *s.* 3. 28 *Geo.* 3. *c.* 49. *s.* 4.

*And where offenders escape into a different county from that wherein the justice may properly exercise a jurisdiction*, it is provided, by 24 *Geo.* 2. *c.* 55, that if any person against

whom a warrant shall be issued, shall escape, go into, reside, or be in any place out of the jurisdiction of the justice granting the warrant, any justice of the place where such person shall be, upon proof on oath of the hand writing of the justice granting such warrant, shall indorse his name thereon, which shall be a sufficient authority to execute the warrant within such other jurisdiction*.

Also by 33 *Geo.* 3. *c.* 55, after reciting that *warrants of distress, granted by justices of the peace, are in many instances ineffectual, by reason of the goods and chattels of the persons against whom such warrants are granted being out of the jurisdiction of the justice granting the same;* it is enacted, that in all cases where any penalty, forfeiture, fine, or other money, may by the warrant of any justice be directed to be levied by distress; if sufficient distress cannot be found within the limits of the jurisdiction of the justice granting such warrant, on oath thereof made by one witness, before any justice of any other county or place (which oath shall be by him certified by indorsement (I) on such warrant), such penalty, forfeiture, fine, or other money, or so much thereof as may not have been before levied, may by virtue of such warrant and indorsement be levied, by the person to whom such warrant shall have been originally directed, by distress and sale of the goods and chattels of such person in such other county or place; and the money arising thereby shall be applied in like manner, as if sufficient goods and chattels have been found within the jurisdiction of the magistrate originally granting such warrant; and if no such distress can be found, such offender may be forthwith proceeded against according to law. *s.* 3.

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* For the manner of executing such indorsed warrant, see a full abstract of this act, in vol. i. under the title Arrests, Div. VI.

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(I) The form of such indorsement.

Monmouthshire, to wit. } *I J P, esq. one of his majesty's justices of the peace in and for the said county, do hereby certify, that oath hath been this day made before me by* C C *the constable named in the within warrant, that he the said* C C *hath by virtue thereof made diligent search for the goods and chattels of the within named* O O; *and that he can find no sufficient goods and chattels of him within the county of* ——, *whereon the within mentioned sum of* —— *may be levied. These are therefore to authorize the said* C C, *who bringeth to me this warrant [and all other persons to whom the said warrant is directed,* If it is directed to more than one person—if not, such words are to be omitted] *to execute the same within the said county of* Monmouth. Given under my hand and seal this —— day of ——, in the year ——

And no justice who shall indorse any certificate upon, or authorize the execution of such warrant, shall be answerable for any irregularity done in the obtaining of such warrant of distress. *Ibid.*

And it is to be observed, that the justices of peace for a county have by their commission, an express authority, as well within liberties as without; from whence it seems clearly to follow, that they may execute their office within a town which has a special commission of the peace for its own limits, unless such commission have a *non intromittant* clause, *that no other justices, except those named in it*, shall any way concern themselves in the keeping of the peace within the liberties of such town; in which case the county justices are excluded from intermeddling in the ordinary business of a justice of the peace within such franchise; and if the county justices should act there, their acts would be void, and not considered only as breach of the franchise. 2 *Hawk. c.* 8. *s.* 29. 2 *Strange*, 1154.

So if a charter granting jurisdiction to borough magistrates, over a district not within the borough, does not exclude the county justices without express words *; and though such charter contain words of reference to former charters, in which exclusive jurisdiction is given to the borough justices, within the borough, and add, that they shall have jurisdiction within the new district, in *as full and ample manner and form*, &c. yet if there be in the latter charter a saving clause of the rights of the crown, and of all other persons, the borough magistrates have only a concurrent jurisdiction with the county justices. *Blankley* v. *Winstanley*, *Ea.* 29 *Geo.* 3. 3 *Term Rep.* 270.

And where two sets of magistrates have a concurrent jurisdiction, and one appoints a meeting for a particular purpose, such as to grant ale licences, their jurisdiction attaches, so as to exclude the others appointing a subsequent meeting; but they may all meet together on the first day: and if after such appointment the other set of magistrates meet on a subsequent day, and grant other licences, their proceeding is illegal, and is therefore the subject matter of an indictment, without the addition of any corrupt motives †. *The K.* v. *Sainsbury*, *Mic.* 32 *Geo.* 3. 4 *Term Rep.* 451. 457.

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* So by charter the mayor and some of the aldermen of *London* have jurisdiction in *Southwark*; but as the charter contains no *non intromittant* clause, as to the justices of the county of *Surry*, the latter have a concurrent jurisdiction with the former. *The* K. *v.* Sainsbury, *Mic.* 32 *Geo.* 3. 4 *Term Rep.* 451.

† For what the law says shall not be done, it is illegal to do, and therefore the subject matter of an indictment; and though the want of corruption may be an answer to an application for an information, which is made to the extraordinary jurisdiction of the court; yet it is no answer to an indictment where the judges are bound by the strict rule of law. *Per Ashhurst*, J. in the above case.

Their power to administer oaths.

SEVENTHLY; *as to their power to administer oaths.*] Doubts have been entertained by some, whether justices have in strictness authority to administer oaths, but the more reasonable opinion hereon seems to be, that the act of parliament, which gives them power to *hear and determine*, and the commission of the peace in pursuance thereof, do without more, give to the justices every thing necessary for the execution of that power, according to the rule laid down by *Coke*, that where the law granteth any thing, that also is granted, without which the thing itself cannot be. 12 *Co.* 130, 131.

And therefore it should seem, that wherever a statute authorizes a justice of the peace to convict an offender in a summary way, by the oaths of witnesses, it doth impliedly and necessarily give him authority to administer such oaths.

And *Dalton* says, that in all other cases where the justice of peace is to take the examination of witnesses, or to punish offenders upon accusation or proof generally, *though* the statute doth not expressly set down that it shall be upon oath, *yet 'tis fit that the justice doth it upon oath* *; for *Brook* Ch. J. of the *Common Pleas* was of opinion, that every examination ought to be upon oath; and *Lambarde*, 517, was also of opinion, that these examinations taken by the justices of peace, *ought always be upon oath*, the rather, because the trial in these cases dependeth wholly upon these examinations †: yea, in all other cases, saith he, wheresoever a man is authorized to examine witnesses, such authority to examine shall be taken and construed to be in such manner as the law requires, which is, only by oath. *Dalton*, c. 115.

However, it seems that a distinction ought to be taken between cases, where the justice acts judicially, and where he acts ministerially; for in the latter case he does not appear to have authority in general to administer an oath, unless such authority is expressly given him by the statute under which he acts.

This seems to be clear, from the act 15 *Geo.* 3. *c.* 39, which was made to empower justices of the peace to administer oaths after a conviction, where penalties are to be levied, or distresses to be made; and that act is as follows:

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* From these words, and what follows, which rather seem to apply to the discretion of the magistrates, it may reasonably be inferred, that *Dalton* did not in the least doubt but that the justices had in general the power here contended for; and were it otherwise, the ill consequence might follow, that notwithstanding the manifest intent of the statutes, many enormities would remain unpunished, as it is clear, that in general, by the course of the common law, no one can be convicted of any offence but by the oath of lawful witnesses.

† And the superior courts in revising the proceedings before the summary jurisdictions, have always required, that rules similar to those adopted by the common law in criminal prosecutions should appear to have been observed. *Boscawen*, 8.

"Whereas it is frequently necessary for justices of the peace "to administer oaths, where penalties are to be levied, or dis-"tresses to be made in pursuance of acts of parliament, which "they have no power to administer, unless authorized so to do "by such acts respectively," it is therefore enacted *that, in all cases, where any penalty is directed to be levied, or distress to be made by an act of parliament now in force, or hereafter to be made, it shall be lawful for any justice or justices, acting under the authority of such acts respectively, to administer an oath or oaths for the purpose of levying such penalties or making such distresses.* 15 *Geo.* 3. *c.* 39.

Now the authority given by this act evidently relates to what may be necessary to be done *subsequent* to a conviction, *for the purpose of levying penalties, or making distresses,* which are mere ministerial acts; it therefore seems to be a legislative confirmation that justices of peace have *impliedly and necessarily* in their previous proceedings, and in order to make a conviction, authority to administer oaths as a necessary consequence of their judicial power; but that in general in ministerial acts they have no such power without being specially authorized by the acts of parliament under which they exercise a jurisdiction.

And Sir *William Blackstone* says, that the law esteems all oaths which do not relate to a civil suit or a criminal prosecution, unnecessary; and that therefore it is much to be questioned, how far any magistrate is justifiable in taking *a voluntary affidavit* in any extra-judicial matter, as is nowo to frequent upon every petty occasion: since it is more than possible, that by such idle oaths a man may frequently *in foro conscientiæ*, incur the guilt, and at the same time evade the temporal penalties of perjury *. 4 *Black. Com.* 137.

## *VI. Regulation of their fees.*

The fees to be paid on proceedings before justices of the peace are in many instances particularly limited by statute. And their oath of office contains the following words: *And that you take nothing for your office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by the statute.*

And it was in general provided by 26 *Geo.* 2. *c.* 14, that the justices of peace throughout *England*, at *Midsummer* sessions 1753, should settle a table of fees to be taken by clerks to justices of the peace within the county, city, or division, for which such sessions were held; and that such respective tables of fees, being approved by the justices at the next suc-

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* For one ingredient to constitute perjury is, that it be committed in some judicial proceeding.

ceeding sessions, with such alterations as such judges so assembled should think proper, should be laid before the judges at the next assizes, or great sessions, who were to confirm such tables of fees, as settled by the justices, or with such alterations as to such judges should appear reasonable. *s.* 1.

And it shall be lawful for the said justices in their respective sessions from time to time, to make any other table of fees to be taken instead of the fees contained in the table confirmed by the judges of assize, and after the same are approved by the justices at the next succeeding sessions, to lay such new table of fees before the judges at the next assizes or great sessions, who are to ratify the same if they think fit.

But no table of fees to be made by the said respective justices of peace, shall be of any validity until the same be confirmed by the said judges. *s.* 1.

And if any time after three calendar months from the time that such table of fees is made and ratified, any clerk to any justice or person acting as such, shall under pretence of any thing done by such justice in the execution of his office, or done by such clerk, demand or receive any other or greater fee than is ascertained and confirmed as aforesaid, such person shall forfeit 20*l.* to any person who shall sue for the same within three months in any court of record at *Westminster*. *s.* 2, 4.

And the said table of fees shall be deposited with the clerk of the peace, who shall cause copies thereof to be kept constantly in a conspicuous part of the room where the general or quarter sessions are held; under pain of forfeiting 10*l.* * to be recovered within three months in any court of record at *Westminster*. *s.* 3.

And by 27 *Geo.* 2. c. 16, in *Middlesex*, the said table of fees shall be confirmed by the two lords chief justices, and the lord chief baron, or any two of them. *s.* 4.

Notwithstanding these statutes the justices have in several counties omitted to settle a table of fees to be taken by their clerks; consequently those who act as such usually receive for transacting of business, such fees as in their discretion they think reasonable: the fees however which are allowed to be taken at the different police offices in Middlesex are clearly settled: and although these can afford no rule to ascertain what the fees for like business ought to be in other counties, either where tables of fees have been settled, or where they have not; yet it is apprehended that the following accurate table of the fees taken at the abovementioned police offices, may convey some useful information to those who undertake to act as clerks to the justices of peace.

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* This last penalty of 10*l.* is not appropriated to any person, and is therefore only recoverable by the crown.

*A Table of Fees taken at the Police Offices in Middlesex.*

| | £. | s. | d. |
|---|---|---|---|
| Information and warrant for an assault - - | 0 | 1 | 0 |
| Discharge of defendant - - - | 0 | 1 | 0 |
| Information and warrant for the peace - | 0 | 1 | 0 |
| Discharge of ditto - - - - - | 0 | 1 | 0 |
| Information and warrant or summons under any of the penal statutes - - - | 0 | 2 | 0 |
| Discharge of ditto - - - - | 0 | 1 | 0 |
| Every charge for disorderly conduct, street walkers, riots, &c. against each person - - - | 0 | 1 | 0 |
| Discharge of each person - - - | 0 | 1 | 0 |
| For every bail or recognizance to answer complaint at the sessions - - - | 0 | 2 | 4 |
| For a bail and supersedeas - - | 0 | 3 | 4 |
| For every conviction besides the penalty paid - | 0 | 1 | 0 |
| For the commitment of an apprentice - - | 0 | 1 | 0 |
| For charges, warrants, and discharges of murders, rapes, and all felonies - - - | 0 | 0 | 0 |
| For binding a parish apprentice - - | 0 | 1 | 0 |
| For discharge of an apprentice from his master before two justices - - - | 0 | 2 | 6 |
| For backing each warrant from one county to be served in another, or from the city to the county | 0 | 1 | 0 |
| Examination and order of removal of a pauper from one parish to another by two justices - | 0 | 2 | 0 |
| Examination of a woman on bastardy and warrant to apprehend the putative father - | 0 | 2 | 0 |
| Adjudication of justices on bastardy - | 0 | 1 | 0 |
| Signing parish poor or other rate books - - | 0 | 2 | 0 |
| A distress warrant for a penalty not paid - | 0 | 2 | 6 |
| Return of ditto *nulla bona* - - | 0 | 1 | 0 |
| An order of a justice - - | 0 | 1 | 0 |
| Signing each distress warrant for parish rates | 0 | 1 | 0 |
| A warrant to work on Sunday - - | 0 | 1 | 0 |
| Information and warrant on the complaint of a deserted wife, and the overseers of the parish to which she has become chargeable, to apprehend her husband - - - - - | 0 | 2 | 0 |
| For each affidavit - - - | 0 | 1 | 6 |
| For each affidavit which the clerk draws up | 0 | 2 | 0 |

*⁎* The officer also receives *from the prosecutor* one shilling for every warrant which he executes: but if the party lives at a distance, it is customary to give him a further sum, in proportion to his trouble, although he cannot legally demand it.

### VII. *How to account for penalties recovered before them out of sessions.*

By 41 *Geo.* 3. *sess.* 2. *c.* 85, *for the better bringing to account and making payment of such share of fines, forfeitures, and penalties, due to his majesty, which are not by law payable to any particular persons, commissioners, or others, levied before justices of the peace acting out of session;* IT IS ENACTED, That it shall be lawful for every justice of the peace acting out of session to receive all fines, forfeitures, and penalties, imposed by him, or any other justice, acting out of sessions, and not made payable to any body corporate, or any commissioners of any public boards, or any other person, and to give receipts for the same, which receipts shall be a discharge to the parties by whom the said fines shall be payable; and such justice shall, by himself or clerk, keep an account in a book to be provided for that purpose, of the amount of every fine, forfeiture, or penalty, set by any adjudication or order made by such justice, specifying the place and time and manner of such adjudication or order, the nature of the offence, and the act under which the same was adjudged, and the name of the person on whom such penalty was set, distinguishing whether the same was paid or levied, and what part thereof, if any, has been paid or payable to any body corporate, commissioners, or persons, with the name and description, of such body, commissioners, or persons, and the authority under which they claimed such part; and shall annually, previous to the *Michaelmas* session, pay into the hands of the sheriff, all such fines, forfeitures, or penalties, or the parts due to his majesty; and the sheriff, or under sheriff, is to give an acquittance for the same, which shall be a full discharge to every such justice. *s.* 1.

And any justice shall, previous to the *Michaelmas* sessions, annually transmit to the clerk of the peace of the county, or clerk of the town, an account in writing, stating the fines imposed by him, and showing which have been received, and from whom, and for what offences; which account the clerk of the peace or town clerk shall enter in his estreats, with the names of the justices, that the sheriff may be charged with the same in his apposal, to the end that the same may be answered to the crown, like fines imposed at any session of the peace. *s.* 2.

As often as two justices shall act together in imposing any fine, then the account shall be kept, and a copy transmitted, and payment made by such of the two justices as shall reside at or near the place where such adjudication was made, or at or nearest where such general quarter sessions shall be held. *s.* 3.

The said clerks of the peace or town clerks shall within ten days next after any general quarter sessions in which such justice shall have returned any conviction, deliver to the bailiff

or chief constable of the district where any person shall reside, who shall be entitled to any share of any fine received by such justice, an account in writing of such fines, which bailiff or chief constable shall transmit an account thereof to the petty constable of the parish, that notice may be given to the person entitled, that he may, without delay, apply to such justice for his share. *s.* 4.

Nothing in this act shall prevent the officers of the crown from allowing any fines, levied by justices, for justices' wages, in the same manner as other fines are now allowed by law; and it shall be lawful for sheriffs, or other persons empowered to allow the same, to have an allowance of poundage on the balance of such fines charged on them, after an allowance for justices wages, in like manner as for fines at the assizes. *s.* 5.

Nothing herein shall prevent the payment to the receiver of fines, by the justices or their clerks, in any of the seven public offices appointed within the counties of *Middlesex* and *Surrey*, under 32 *Geo.* 3. *cap.* 53. *s.* 6.

### VIII. *How far protected in the execution of their office, and herein of their punishment for misdemeanors.*

A justice of the peace is under the peculiar protection of the law: for he is not punishable at the suit of the party*, but only at the suit of the king, for what he doth as judge in matters which he hath power by law to hear and determine †. 2 *Hawk.* c. 13. *s.* 20. Not punishable for an error of judgment.

For no action on the case will lie against a judge for what he does as a judge. 2 *Roll. Rep.* 129. 14 *Viner*, 579.

But in cases wherein he proceeds ministerially, rather than judicially, or where he exceeds the limits of his jurisdiction, he

* Unless the malice be very gross and injurious. 1 *Burrow's Rep.* 556.

† But it does not seem that a justice is punishable by indictment for words addressed to jurors in his judicial capacity, however gross they may be, as where a justice in the general sessions of the peace said to the grand jury, *You have not done your duty; you have disobeyed my commands; you are a seditious, scandalous, corrupt, and perjured jury;* for lord *Mansfield*, on a motion to quash and indictment against a justice of peace for using such words, is reported to have said as follows: A judge of a court of record cannot be put to answer civilly or criminally, for words spoken in office. If the words spoken are opprobrious, or not relevant to the case in hand, the court will take notice of them as a contempt, and examine on information. If any thing of *mala mens* is found on such inquiry, it will be punished suitably. The words are extremely improper. If the party were not a borough justice, I think there might be ground to apply to the great seal to remove him from his office; but to go upon an indictment would be subversive of all ideas of a constitution. But if any precedent can be found, you should have time to make use of it, otherwise it would be proper to quash the indictment immediately. *The King* v. *Skinner*, *Tr.* 1 *Geo.* 3. *Lofft*, 55.

is liable to an action on the case at the suit of the party, as well as to an information at the suit of the king *. 2 *Hawk.* c. 13. s. 20. 2 *Lutwich*, 1516. *Buller's Nisi Pri.* 8*vo. ed.* 64.

As, if my servant be robbed, and he go to a justice of peace and pray to be examined touching the robbery, and the justice refuse to examine him, so that I am thereby damnified, and cannot proceed against the hundred, I may have an action against the justice. 1 *Leon.* 323.

Or I may move the court of King's Bench for an information, and afterwards apply to the court of *Chancery* to put him out of the commission. 2 *Atk. Rep.* 2.

Thus in the case of *the K.* v. *Newton and others*, *Hil.* 7 *Geo.* 1. The 1 *Geo.* 1. c. 13. s. 11, having enacted, that two justices may summon any person to take the oaths before them; and if they do not appear, then on oath of serving such summons, that the justices are to certify the same to the quarter sessions, where if the party so summoned doth not appear to take the oaths he shall stand convicted of recusancy: the defendants, being justices of the peace, had issued their summons; but coming afterwards to understand, that the party was a gentleman of fashion, and not suspected to be against the government; lest a transaction of this nature should be an imputation upon him, they refused to give the prosecutor his oath of the service of such summons, that the matter might go no farther. And now upon motion against them for an information, the court declared that the justices had no discretionary power to refuse to put the act in execution, and therefore granted an information against them. 1 *Strange*, 413.

The court of King's Bench will also grant a *mandamus* to compel the justices of peace to do that which by the duty of their office they ought to do, and there are many instances thereof in the books †.

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* For an improper and unjust exercise of their discretion ought to be under control; but it must be a clear and apparent partiality or wilful misbehaviour to induce the court to grant an information, not a mere error in judgment. *Per Dennison* J. in the case of *the K.* v. *Young and Pitts*. 1 *Burrow's Rep.* 556.

And lord *Mansfield* in the same case said, If their judgment is wrong, yet their heart and intention pure, God forbid that they should be punished!

† Viz. to admit a constable, *Noy*, 78.——to allow constables extraordinary charges in providing carriages for the king's forces. 1 *Strange*, 42. 93.——to appoint overseers. 1 *Strange*, 512. *Fortescue*, 321. 1 *Wilson*, 138. 1 *Term Rep.* 374,——to sign poor rates. *Carthew*, 450. *Cas. B. R. temp. Lord Hard.*——to take surety for the peace. *Comyns' Dig. tit. Mandamus*, A.——to proceed to judgment on an information of a seizure. *The K.* v. *Tod*, 1 *Strange*, 530.——also in a variety of other cases.

But unless it clearly appears that the justice hath been partially, maliciously, or corruptly influenced in the exercise of his authority, and hath consequently abused the trust reposed in him, the court will not be induced to grant an information. *Burrow's Rep.* 556. 2 *Douglas*, 8*vo. ed.* 427.

For the rule is invariable, that the court will never interpose to punish a justice of the peace for a mere error in judgment. 1 *Burrow's Rep.* 556. 785. 2 *Douglas*, 8*vo. ed.* 27. 1 *Term Rep.* 653. 692.

And even where a justice acts illegally, yet if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever, the court will never punish him in the extraordinary course of an *information;* but leave the party complaining to their ordinary remedy or method of prosecution, by action or by indictment. 2 *Burrow's Rep.* 1162.

And it seems that the justice is not liable to be punished both criminally and civilly; for before the court will grant an information they will require the party to relinquish his civil action, if any such is commenced: and even in the case of an indictment, and although the indictment is actually found, yet the attorney-general (on application made to him) will grant a *noli prosequi* upon such indictment, if it appear to him that the prosecutor is determined to carry on a civil action at the same time. 2 *Burrow's Rep.* 719.

A month's previous notice to be given before any action is brought against any justice.

By 24 *Geo.* 2. *c.* 44, no writ shall be sued out against, nor any copy of any process at the suit of a subject shall be served on, any justice of the peace, for any thing by him done in the execution of his office, until notice in writing of such intended writ or process be delivered to him, or left at the usual place of his abode, by the attorney for the party who intends to sue, at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action, on the back of which notice shall be indorsed the name of such attorney, with the place of his abode, who shall be entitled to the fee of 20*s.* for preparing and serving such notice. *s.* 1.

And unless it is proved upon the trial that such notice was given, the justice shall have a verdict and costs. *s.* 3.

And no evidence shall be given by the plaintiff on the trial of any such action, of any cause of action, except such as is contained in the notice. *s.* 5.

Justices of the peace.

And no action can be brought against a justice of the peace for any act done by him in that character, without giving him a month's notice of the *cause of action, and also of the particular writ or process* intended to be sued out against him; and if the notice omit the latter, it will be a good ground of objection at *nisi prius*, to obtain a nonsuit. *Lovelace* v. *Curry*, E. 38 *Geo.* 3. 7 *Term Rep.* 631. And notice of *an action on the*

case *for false imprisonment and assault* has been held not sufficient to support *an action of trespass and false imprisonment*. *Strickland* v. *Ward*, (n) 7 Term Rep. 631.

And if a plaintiff's attorney, previous to bringing the action, make out two papers precisely similar, purporting to be demands of a copy of the warrant, and sign both for his client, and then deliver one to the justice, the other will be sufficient evidence at the trial. *Jory* v. *Orchard*, Mich. Term, 40 Geo. 3. 2 *Bos. & Pul.* 39.

But an action of replevin on a parish officer making a distress under the authority of a warrant from a justice of the peace, is not such an action as is within this clause of the statute, which requires a previous demand of the sight of the warrant, and notice of the cause of action. *Fletcher* v. *Wilkins, and others*, *Hil. Term*, 46 *Geo.* 3. 6 *East's Rep.* 283.

Justice may plead the general issue.

And by 7 *Jac.* 1. *c.* 5, the justice may plead the general issue, and give the special matter in evidence; and if the verdict pass with the defendant, or the plaintiff become nonsuit, or suffer any discontinuance, *the judge before whom the matter shall be tried* * shall allow the defendant double costs.

Action to be laid in the proper county.

And by 21 *Jac.* 1. *c.* 12, such action shall not be laid but in the county where the fact was committed.

Justice may tender amends.

And it shall also be lawful for such justice of peace, at any time within one calendar month after such notice given, to tender amends to the party complaining, or to his attorney; and in case the same is not accepted, to plead such tender in bar to any action grounded on such writ or process, together with the plea of not guilty, and any other plea, with leave of the court; and if upon issue joined the jury find the amends so tendered to have been sufficient, they shall give a verdict for the defendant; and in such case, or in case the plaintiff become nonsuit, or discontinue his action, or judgment be given for such defendant upon demurrer, such justice shall be entitled to the like costs as if he had pleaded the general issue only; and if the jury find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other

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* Therefore to entitle the party to these double costs it must be certified *by the judge who tried the cause*, that he was acting in the execution of his office; and for that purpose application must be made to the judge at the time of the trial: and if no such application is then made the court above will not direct any suggestion that he was so acting, to be afterwards entered on the roll. 1 *Douglas Rep.* 8*vo. ed.* 307.

But where there is a special verdict, and it appears by the facts there found, that the act for which the action was brought was done by the defendant by virtue or reason of his office, the master must tax double costs, though there has been no certificate nor allowance by the judge who tried the cause. 1 *Doug.* 8*vo. ed.* 308.

plea, they shall give a verdict for the plaintiff, and such damages as they think proper, which he shall recover, together with his costs. 24 *Geo.* 2. *c.* 44. *s.* 2.

And where the plaintiff in any such action against any justice of the peace shall obtain a verdict, in case the judge before whom the cause is tried, in open court certify on the back of the record, that the injury for which such action was brought was wilfully and maliciously committed, the plaintiff shall be entitled to double costs. *s.* 7.

And in case such justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall be lawful for him, by leave of the court where such action depends, at any time before issue joined, to pay into court such sum as he sees fit; whereupon such proceedings shall be had as in other actions where the defendant is allowed to pay money into court. *s.* 4.

Plaintiffs in actions for informal proceedings on penal statutes, to be entitled only to 2*d.* damages, except it be charged as done maliciously.

And by 43 *Geo.* 3. c. 141, in all actions whatsoever, which shall be brought against any justice of the peace for or on account of any conviction under any act of parliament; or for any act, matter, or thing whatsoever, done or commanded to be done by such justice, for the levying any penalty, apprehending any party, or for or about the carrying of any such conviction into effect; in case such conviction shall have been quashed, the plaintiff in such action, besides the value and amount of the penalty levied, in case any levy thereof shall have been made, shall not be entitled to recover more damages than 2*d.* nor any costs; unless it shall be expressly alleged in the declaration, and which shall be in an action upon the case only, that such act were done maliciously, and without any reasonable and probable cause. *s.* 1.

And not entitled to recover at all if the offence was committed.

And such plaintiff shall not be entitled to recover against such justice any penalty levied, nor any damages or costs whatsoever, in case such justice shall prove at the trial that such plaintiff was guilty of the offence whereof he had been convicted, or on account of which he had been apprehended, or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence. *s.* 2.

Agreement between the parties cannot be pleaded by a justice, in an action brought against him.

But to an action brought against justices of the peace for a trespass and false imprisonment, accord and satisfaction cannot be pleaded, alleging that it was agreed between the prosecutor and the plaintiff, *with the consent of the committing magistrates* (the defendants) that the prosecution should be dropped, and the plaintiffs be discharged at the sessions for want of prosecution; and that the plaintiff was accordingly then and there so discharged, *in full satisfaction and discharge of the assault and imprisonment*, for this is no legal satisfaction for either. The agreement was illegal, as stifling a prosecution for *a public misdemeanor*, viz. maliciously disturbing a dissenting congregation under *s.* 18 of the toleration act, 1 *Will.* and *Mar.* c. 12,

which see under DISSENTERS in vol. 1, and thereby impeding the course of justice; or the satisfaction, if any, was moving from the prosecutor only, and not from the justices; their authority over a prosecution being at an end, after commitment, and *their consent* afterwards to a prosecutor's dropping the prosecution is a mere nullity, and no satisfaction for a prior injury, if any, received by the plaintiff from their act. *Edgecombe* v. *Rodd, and others*, 5 *East's Rep.* 297. 1 *Smith's Rep.* 515.

Indemnity of officers acting under a justice's warrant.

A constable cannot justify any arrest by force of a warrant from a justice of peace, which expressly appears on the face of it to be for an offence whereof a justice of peace hath no jurisdiction, as if it be to arrest one for slander, or to bring a person before him at a place out of the county for which he is a justice. 2 *Hawk. c.* 13. *s.* 10. *Wood*, 61. *c.* 7. *s.* 4. *Black. Com.* 291.

But if a justice of peace shall make any warrant for a matter wherein he hath jurisdiction, although it be beyond his authority, yet it is not disputable by the constable, or other such officer, but must be obeyed and executed by the officer; as if the justice of peace shall make his warrant to arrest one for the peace or good behaviour, or the like, without cause, the officer shall not be punished for executing this*. *Dalton*, *c.* 169. *p.* 579.

And by 33 *Geo.* 3. *c.* 55, it shall be lawful for two justices at any special or petty sessions, upon complaint made upon oath before them of any neglect of duty, or of any disobedience of any LAWFUL warrant or order of any justice or justices by any *constable*, overseer of the poor, or other peace or parish officer † (such officer ‡ having been duly summoned to appear and answer such charge), to impose upon conviction any fine not exceeding 40*s.* upon such officer ¶, and by warrant under their hands and seals to direct such fine, if not paid, to be levied by distress and sale of the goods and chattels of the person offending, rendering the overplus, if any, after deducting the amount of such fine, and the charges of distress and sale, to such offender, and for want of such distress such person shall be committed to the house of correction for not exceeding 10 days; and such fine upon any such officer

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* See title ARRESTS, div. vi.

† Or upon complaint made to two such justices upon oath, by or on the behalf of any apprentice to any trade or business whatsoever, whether bound apprentice by any parish or township, or otherwise, if not more than 10*l.* be paid upon the binding of such apprentice, against his master or mistress of any ill usage of such apprentice by such master or mistress.

‡ Or such master or mistress.

¶ Or such master or mistress.

shall be applied for the relief of the poor of the parish where the offender shall reside *. *s.* 1.

But if any person shall be aggrieved by the imposition of such fine, or by any order or warrant of distress, or by the judgment of the said justices, or by any act to be done in the execution of such warrant of distress, such person may appeal to the next general or quarter sessions, of which appeal 10 days notice shall be given. *s.* 1.

And no person shall be deemed a trespasser *ab initio*, by reason of any irregularity or informality in the warrant of distress, or in any proceedings thereon; but any person aggrieved thereby may recover damages in an action in any of his majesty's courts of record. *s.* 2.

But by 7 *Jac.* 1. *c.* 5, if any action be brought against any constable for any thing by him done in the execution of his office, he may plead the general issue, and give the special matter in evidence; and if the verdict pass with the defendant, or the plaintiff become nonsuit or suffer any discontinuance, *the judge before whom the matter shall be tried* † shall allow the defendant double costs.

And by 21 *Jac.* 1. *c.* 12, such action shall be laid in the county where the fact was committed.

And by 24 *Geo.* 2. *c.* 44, no action shall be brought against any constable, headborough, or other officer, or against any person acting by his order and in his aid, for any thing done in obedience to any warrant under the hand or seal of any justice of the peace, unless it be commenced within six calendar months after the fact committed; nor until demand hath been made or left at the usual place of his abode, by the party intending to bring such action, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant; and the same hath been refused or neglected for six days after such demand; and in case after such demand and compliance therewith, any action be brought against such officer, for any such cause as aforesaid, without making the justice who signed or sealed the said warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in such justice; and if such action be brought jointly against such justice, and such officer, then, on proof of such warrant, the jury shall find for such officer, notwithstanding such defect of jurisdiction; and if the verdict

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* And such fine imposed upon any master or mistress shall at the discretion of the justices be either so applied, or otherwise paid for the use and benefit of such apprentice, as a recompense for the injury which may have been by him sustained for such ill usage.

† See note * p. 148.

be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner as to include such costs as such plaintiff is liable to pay to such defendant for whom such verdict is found as aforesaid. *s.* 8. 6.

And in actions brought against the justices for misdemeanors in the execution of their offices, they are obliged to show the regularity of their convictions; and the informations laid before them, upon which the convictions are grounded, must be produced and proved in court. 1 *Ses. Cases*, *Ca.* 297.

## IX. *Slandering of Justices of Peace.*

Slandering of justices.

For slander by words spoken there is in general no other remedy than by an action upon the case, yet in some cases the speaker of slanderous words may be proceeded against as a criminal. *Bacon's Abr. tit.* "*Slander.*"

As for instance, if they be a slander which it more particularly concerns the public to prevent, *as speaking any thing slanderous to a justice of the peace in the execution of his office*, the slanderer may be proceeded against by indictment or information. *Ibid.*

Or the justice, if he think fit, may immediately commit the offender until he shall find sureties for the peace or good behaviour, as the case shall require *. 1 *Strange*, 421. 2 *Hawk. 8vo. ed. n.* 4.

But it seems that if the words are spoken behind his back, the proper remedy is an action on the case; and to support such action the words (if they are not of themselves, and as spoken of indifferent persons, actionable) must be such as impute a want of integrity †, and not a mere

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* See p. 134 supra.

† As that he is a *common barretor. Hob.* 140.—a *corrupt* man. 1 *Rol. Abr.* 57.—a *forsworn* justice. 1 *Levinz*, 280.—a *false* justice. *Cro. Eliz.* 158,—a half-eared justice, he will hear but one side *Cro. Car.* 223.—I have often been with him for justice, but never could get any at his hand but i. justice. *Cro. Car.* 14.—He did for malice and spleen many times wrest the law, and pervert justice to serve his own turn. *Cro. Jac.* 240.—He is a debauched man, and not fit to be a justice. 1 *Rol. Abr.* 48.—He covereth and hideth felonies, and is not worthy to be a justice. 4 *Co. Rep.* 16.—For all these import corruption and a want of integrity in his office.

So also for publishing these words, *He is a rogue, a rascal, a villain, and a liar*, an action will lie; for though rascal and villain be uncertain, yet being joined with *liar*, and spoken of a justice of peace, they do import a charge of acting corruptly and partially. 1 *Strange*, 617. 2 *Lord Raym.* 1396.

But for saying of a justice that he is an ass and a beetle-headed justice, a coxcomb, or that he is not worth a groat, or the like, is not actionable, for these only import a want of ability. *Salk.* 695. 1 *Sid.* 67. *Levinz*, 52. 1 *Vent.* 258.

defect of understanding or ability: for a man cannot help his want of ability, as he can his want of honesty. *Strange*, 420. *Salk.* 695. *Buller's Nisi Pri.* 8*vo. ed.* 4.

*Labourers.* See SERVANTS.
*Landlord and Tenant.* See DISTRESS.
*Land Tax.* See TAXES.
*Larceny.* See FELONY.
*Lecturers.* See PUBLIC WORSHIP.

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## LEET.

THE court *leet* and view of frank-pledge * is a court of record held before the steward of the leet, having the same jurisdiction within some particular hundred, lordship, manor or precinct, which the sheriff's torn hath in the county. 2 *Hawk.* c. 11. *s.* 1. 4 *Black. Com.* 273. *Wood's Inst. b.* 4. *c.* 1. *s.* 16. What it is.

And it is said to have been derived out of the *torn* † for the ease of the people, being a grant from the king to the lords of hundreds, and manors, and lesser franchises, and to mayors of cities, and towns corporate to have the view of the tenants and resiants within their precincts, so as the tenants and resiants should have the same justice that they had before in the *torn*, done unto them at their own doors, without any charge or loss of time ‡. 2 *Inst.* 71. *Wood's Inst. b.* 4. *c.* 1 *s.* 16. Its origin.

Hence, therefore, we may perceive the occasion of its being also styled, *the view of frank-pledge*; for it is to be observed, that by the ancient laws of this realm, before the coming of

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* Which is the name or style o the court as formally entered in its own proceedings.

† The *torn* and the *leet* (derived out of it) were anciently the principal courts of criminal jurisdiction, coeval with the establishment of the Saxons here; and the activity of those courts is marked very visibly both among the Saxons and the Danes; but there are no traces of them amongst the Romans or Britons, Per Lord *Mansfield* in the case of Sir *Geo. Colebrooke* v. *Elliot*. 3 *Burrow's Rep*, 1860.

‡ For the people did undergo great trouble in travelling to the sheriff's torn. *Wood's Inst. b.* 4. *c.* 1. *s.* 16.

*William* the conqueror, it was ordained, for the better preservation of the peace, and for the preventing thefts and repressing malefactors, that all the inhabitants should cast themselves into distinct societies of ten men, and their respective families in a company, and that every of these ten men should be surety and pledge for the good behaviour of the rest, and that these were termed frank-pledges*. *Lambarde's Duty of Constable*. 5. *Shawe's Par. L. c.* 61. *s.* 3. *Comp. Par. Off.* 2. 4 *Black. Com.* 273.

The original intent of this court was therefore to view the frank-pledges. 4 *Black. Com.* 273.

At what time and place to be held.

Leets may be held by *charter* or *prescription* ; and he that claims a leet by *charter*, must hold it on the days prescribed by the charter ; he that claims it by prescription may claim and hold it once or twice every year, at any such days as shall upon reasonable warning be appointed, if the usage hath been kept at uncertain times ; or else it ought to be kept at such certain days and times as by prescription hath been certainly used. 2 *Inst.* 72.

But if the charter or prescription does not direct otherwise, by the equity of *Magna Charta*, c. 35, it shall be held within a month after *Easter* and a month after *Michaelmas*. *Comyns's Dig. tit. Leet* (c.)

It is said that the leet may be held at any place within the seignory where the lord pleases. *Kitchen*, 44. b.

But it rather seems that it ought to be kept at a certain and determinate place within the precinct. *Wood's Inst.* 72. *Rastal's Ent.* 151.

What persons owe suit to it.

All freeholders within the precinct, and all other people above the age of twelve years and under sixty, commorant therein†, except peers, clergymen, women, and tenants in ancient demesne, owe personal suit and attendance to this court ; that is, they are bound to appear upon the jury, if required, and

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* Thus, of every ten householders throughout the kingdom, each man had nine pledges or sureties for his good behaviour ; and such singular effects had the due execution of this admirable institution among a barbarous and disorderly people, that peace was universally holden within this realm, insomuch that no injuries, homicides, robberies, thefts, riots, tumults, or other offences were committed ; and is said, not only, that a man might have safely ridden throughout England with much treasure about him, without any other weapon than a white wand : but that so exact was the general police that king *Alfred* hung up by way of bravado golden bracelets near the highways, and no man dared to touch them. 2 *Inst.* 73. *Hume's Hist. England.*

† Which commorancy consists, according to *Blackstone*, in usually lying there. 4 *Black. Com.* 273.

For no one is bound to attend on the account of his lands lying within the precinct, but only in respect to his personal residence. *Wood's Inst. b.* 4. *c.* 1. *s.* 16.

make their due presentments. *Wood's Inst. b.* 4. *c.* 1. *s.* 16. 4 *Black. Com.* 273.

But no man can be within two leets at the same time, and in the same respect; therefore he who resides within the precincts of a leet, the lord whereof doth duly hold his court, cannot be compelled to come to the torn, or any other superior leet, for the taking the oath of allegiance, or any other such like purpose, which may be as well answered by his attendance at his own leet. 2 *Hawk. c.* 11. *s.* 3.

Yet if such private leet have not the general jurisdiction of the torn, but be specially granted for two or three articles of it only, it seems that the inhabitants within its precincts must attend the sheriff's torn for all such matters of which such private leet hath no jurisdiction. *Ibid.*

Also it seems to be a good prescription for a grand leet (to which other inferior leets may be subordinate in the same manner as that is to the torn) to oblige the chief pledges, and a certain number of the inhabitants of every town within its precinct, to appear at every such grand leet to inquire of such offences as have not been inquired of in the inferior leets. *Ibid.*

And it is said, by some books, that any person happening to be present at a court leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the precincts of the leet or not; by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. 2 *Hawk. c.* 10. *s.* 67.

Summoning persons to take oaths of allegiance.

Anciently it was the custom to summon all the king's subjects as they respectively grew to years of discretion and strength, viz. at twelve years, to come to the court leet, if he were in any leet, or in the torn if he were not in any leet, to take the oath of allegiance to the king. 2 *Inst.* 73. 4 *Black. Com.* 274.

Electing constables.

Also by immemorial usage and of common right, constables* are to be chosen and sworn in the leet or torn. 2 *Hawk. c.* 10. *s.* 37. 1 *Salk.* 175.

Where the court may impose a fine.

If any contempt or disturbance to the court be committed in any court of record, the judges may impose a reasonable fine on the offenders; and a *leet is a court of record*, and the steward is judge there, and therefore may impose a reasonable fine on any such offenders for an offence done to the court before him: as if a suitor refuse to be sworn, a bailiff refuse to make a panel, a tythingman neglect to make his presentment, or one of the jury refuse to present the articles wherewith they are charged, or a person duly chosen constable refuse to be

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* So also hath this court authority to elect other officers, such as haywards, ale-tasters, &c. *Wood, b.* 4. *c.* 1. *s.* 16.

sworn; in all these and the like cases* the steward shall impose a reasonable fine upon him. 8 *Co. Rep.* 38. 2 *Hawk.* c. 10. s. 16.

And the court leet is so far intrusted with the keeping of the peace within his own precinct that the steward may, by recognizance bind any person to the peace who shall make an affray in his presence, sitting the court, or may commit him to ward either for want of sureties, or by way of punishment, without demanding any sureties of him, in which case he may afterwards impose a fine according to his discretion. 2 *Hawk.* c. 1. s. 15.

But it is said that for bare opprobrious language, or refusing to execute the duties of an office, it has authority only to fine, and not to imprison the offenders. 2 *Hawk.* c. 1. s. 15.

So as this court may fine, it may make proclamation upon pain; as, proclamation for silence, upon pain; or command that an officer shall do his duty upon pain, and if he do not, he shall lose his office. 1 *Rol.* 219. *Comyns's Dig. tit. Leet.* (*N.* 2)

But all fines ought to be severally imposed upon every offender and not jointly upon them all, though many join in the same offence, for the offence of one is not the offence of the others. But when there is an uncertainty, as to the offenders, as where a whole ville is to be fined; in such case, for the necessity of the thing, a joint fine upon all is good. *Dyer*, 211. b. 11 *Co. Rep.* 42, 43. 2 *Hawk.* c. 10. s. 16. *Comyns's Dig. tit. Leet.* (*N.* 4)

The fine is always assessed by the steward, and is not to be affeered; and the lord by a special warrant to the bailiff may distrain, or he may have an action of debt for the same, but he cannot imprison. *Wood's Inst.* b. 4. c. 1. s. 16.

But the fine ought to be reasonable. 4 *Inst.* 261. 1 *Will.* and *Mar. st.* 2.

And therefore if a fine in a court leet be unreasonable it may be avoided by plea and judgment of the court; for the judges are to determine the reasonableness of the fine. 11 *Co. Rep.* 44.

So if a fine be excessive or without cause, it shall be discharged upon a *certiorari* to remove it. 1 *Vent.* 336.

So upon a distress for such a fine trespass lies. 2 *Jones*, 229.

And upon a *certiorari*, the cause of the fine, the words or contempt for which it was imposed ought to be shown in particular. 1 *Vent.* 336.

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* As if one put on his hat in the court, and being admonished by the steward, replies, I do not value what you do. *Raym.* 68. Or give the steward the lie openly in the leet. *Moore's Rep.* 470. *Cro. Eliz.* 581.

For a transgression out of court, of which the court has cognizance, as for not appearing, or the like, the judge cannot fine, but may order the defaulter to be amerced, and direct the jury to affeer (*that is, to tax and moderate*) the general amercement on him, according to the particular circumstances of the offence; after which it seems that the lord may of common right either distrain for it, or bring an action of debt, in like manner as for a fine*. *Gilbert's Dist.* 12. 14. 2 *Hawk. c.* 10. *s.* 17, 18, 19. *Comyns's Dig. tit. Leet.* (*O.* 1.) Amercements.

And when an offence is presented by the jury, the punishment is by amercement and not fine, though it is a contempt. *Andr. Rep.* 47.

And upon presentment of a nuisance, the steward may either amerce the person and order him also to remove it by such a day, under pain of forfeiting a certain sum; or he may order him to remove it, under such a pain (I), without amercing him at all: and on presentment (II) at another court, that he hath not removed such nuisance, (having had notice thereof) the pain may be recovered by distress or action of debt, without further proceeding. 2 *Hawk. c.* 10. *s.* 32.

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*For more on this subject see title DISTRESS, Div. iii. in vol. i.

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### (I) Forms of ORDERS UPON PAIN.

*It is ordained that* OO *do make and scour his ditch at* —— *containing by estimation* —— *perches, before the feast of the nativity of Saint John the Baptist next coming, under the pain for each perch thereof of* 8*d*. Kitchen, 102.

*It is also ordained that* O O *do reform and throw open a certain parcel of land lately by him encroached between* —— *and* —— *before* —— *under the pain for each perch not reformed and thrown open of* 20*d*. Kitchen, 102

*It is also ordained that* O O *do remove his dunghill lying by the king's highway over against his house, before* —— *under pain of forfeiting to the lord* 10*s*. Kitchen, 106.

### (II) Presentment of PAIN INCURRED.

*The jurors for our lord the king upon their oath say, that it was at the day of the last court ordained, that* O O *should remove his dunghill, lying by the king's highway, over against his house, before* —— *under pain of forfeiting to the lord* 10*s*. *and that he hath not yet removed the said dunghill, therefore he incurs the said pain; and it is commended to the bailiff to levy the said pain so forfeited to the use of the lord.*

But it is to be observed that no bailiff can lawfully distrain for any such fine or amercements without a special warrant for so doing, which must be set forth by him in an avowry or justification of such a distress. 2 *Hawk. c.* 10. *s.* 30.

But an amercement at a court leet for a private injury to the lord is illegal, though there be a custom to warrant it. 6 *Ter. Rep.* 511.

Power to make bye-laws. — It seemeth also that of common right any court leet with the assent of the tenants may make bye laws under certain penalties, in relation to such *public matters* as are properly within the cognizance of such court, as the reparation of the highways, and the like: and also a court baron by custom may make bye-laws, for the well regulating of commons and such like *private matters*; and therefore when a court leet and baron are holden together, as they usually are, it seems that what is transacted therein in relation to *public matters* shall be applied to the juridsiction of the court leet, and what is done in relation to *private matters* shall be intended to be done by the court baron. 2 *Hawk.* c. 10. s. 52.

What cognizance it hath in felonies. The leet hath power to receive indictments* of felonies, at the common law, but not of felonies by act of parliament, unless specially limited thereto. 2 *Hale's Hist.* 71.

And they have also power to apprehend the parties indicted. 4 *Burrows' Rep.* 1861.

But although the leet may receive indictments of felony, and apprehend the parties indicted, yet it cannot hear and determine such indictments, for it must send them to the gaol delivery, there to be heard and determined if the offenders are in custody, or remove them by *certiorari* into the *King's Bench*, that process may be made upon them to outlawry. 2 *Hale's Hist.* 71.

Its general jurisdiction. The other general business of the leet is not only to present by a jury†, but also to punish a variety of offences under the degree of felony, which in some measure, either more or less, affect the public weal, or good governance of the district, in which they arise. 4 *Black. Com.* 274.

And these objects of their jurisdiction are either such offences as amount to an actual trespass, or such as do not amount to such a trespass. 2 *Hawk.* c. 10. s. 52.

A custom to swear the jurors at one court leet to inquire and return their presentments at the next court is bad in law, and cannot be supported; for beside opening a door to great abuses, there is no reason why a jurisdiction of so much less moment should require longer time for deliberation than is usual with

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* That is by the presentment of a jury of the suitors elected, sworn, and charged for that purpose, consisting of not less than twelve nor more than twenty-three.

† This leet jury in some precincts continue in office for a whole year, while in others they are sworn and discharged in the course of the day.

grand jurors, who inquiring for a whole county are presumed to be and prove themselves competent to make their presentments at the same courts at which they are sworn. *Davidson* v. *Moscrop*, *Mic. Ter.* 42 *Geo.* 3. 2 *East's Rep.* 56.

And First, as to such offences amounting to an actual trespass, it is agreed,

1. That an *assault* and *battery* is inquirable here *if there be any bloodshed* in it, but otherwise not; because in such case it is not looked on as a common grievance, but as an injury to a particular person. *Stat. for view of Frankpledge*, 18 *Ed.* 2, and 2 *Hawk. c.* 10. *s.* 53.

2. That all affrays are also inquirable here, because they are to the terror of the people. *Stat.* 18 *Ed.* 2. and 2 *Hawk. c.* 10. *c.* 54.

3. That the common breaking of hedges, walls, or dykes may also be inquired of in this court, but not the breaking of any particular hedge, because that is no common grievance. *Stat.* 18 *Ed.* 2, and 2 *Hawk. c.* 10. *s.* 55.

4. That all pound breaches may be inquired of in this court as being common grievances, in direct contempt of the authority of the law by which pounds are provided for the legal detainment of distresses till they shall be delivered by due course of law. 2 *Hawk. c.* 10. *s.* 56.

As to those objects of their jurisdiction which do not amount to an actual trespass, they either immediately concern the king's interest or do not. 2 *Hawk. c.* 10. *s.* 56.

As to those which immediately concern the king's interest, it seems to be agreed, that all perprestures or encroachments upon the king—and alienations in *mortmain*—and seizures of *treasure trove*—or of *waifs*—or *estrays*—or goods wrecked belonging to the king, may be inquired of in this court. 2 *Hawk.* c. 10. *s.* 57.

But it seems questionable whether a prescription in a court leet to inquire of the seizure of such things belonging to the lord of it, being a subject, be good or not, since it is against the general rule of the law for the court leet to take conusance of trespasses done to the private damage of the lord, because that would make him his own judge*. 2 *Hawk. c.* 10. *s.* 57.

As to offences of this kind, which do not immediately concern the king's interest, it seems to be a general rule, that all

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* And it hath been resolved that a man cannot be amerced in a court leet for surcharging a common, or for digging in a common, because this only concerns the private interest of the inhabitants. 2 *Hawk.* c. 10. *s.* 61.

COMMON NUISANCES are indictable in this court; that is to say, all annoyances to common bridges and highways, ditches not coursed, the removing of bounds or land-marks, waters turned or stopped, bawdy-houses; and also other such like offences, as selling corrupt victuals, or exposing them to sale, breaking the assize of bread, ale, wine, and the like: neglecting to hold a fair or market in pursuance of a grant or prescription. *Stat. for View of F. P.* 18 *Ed.* 2, and 2 *Hawk.* c. 10. s. 58.

Also it seems that the keeping of false weights or measures is indictable in this court whether it appear that they were actually made use of or not. 2 *Hawk.* s. 10. s. 58.

Also it is said, that all *common disturbers of the peace* may be here indicted, as barretors, common scolds, eaves droppers, and also all *common oppressors*, as usurers, and also all *dangerous and suspicious persons*, as vagabonds, or those who go abroad in the night and sleep in the day, or those who inordinately haunt taverns, having no visible means to live by; and also all suitors to the court who shall make default; and also all those who shall levy a hue and cry without cause, or shall neglect to levy one where they ought, or to pursue one rightly levied. *Same stat.* 18 *Ed.* 2. and 2 *Hawk.* c. 10 s. 58.

Also it is said that every ville, within the precinct, is indictable in it for not having a pair of stocks, and shall forfeit 5*l.* for that every ville is of common right bound to provide a pair of stocks. 2 *Hawk.* c. 10. s. 59. 2 *Hawk.* c. 11. s. 5.

Also by divers statutes many other offences are inquirable in this court, such as the making of impure or unseasonable malt, or putting to sale of malt not sufficiently trodden, rubbed, and fanned*; the using of two trades, namely, of shoemaker, currier, leather cutter, and tanner, or tanner and butcher†: the using of any art and mystery in which the party hath not been brought‡: the buying of raw hides by any but tanners; or butchers gashing hides, or killing calves to sell under five weeks old; and the unlawful tanning of hides, currying of leather, or making of shoes§: the tracing and killing hares in the snow; or hawking or hunting in eared or codded corn ‖: the putting of undersized or mangy horses upon commons ¶: the keeping of a common house, alley, or place for bowling, or other unlawful game, and using and haunting the same, and there playing**: the taking or killing the young fry or fish,

* See 2 & 3 *Ed.* 6. c. 10, in vol. ii. p. 118.

† See 1 *Jac.* 1, c. 29, *and* 23 *Car.* 2. c. 19, under the title MANUFACTURERS, *s. Leather.*

‡ See 31 *Eliz.* c. 5, in vol. i. p. 173.

§ See 1 *Jac.* 1, c. 22, under title MANUFACTURES, &c. § *Leather.*

‖ See title GAME.

¶ See 32 *Hen.* 8. c. 13. under title HORSES.

** See title GAMING, &c.

or fishing with a net of unsizeable meshes *: tippling in ale-houses †: watering hemp or flax in a river ‡.

Within what time offences to be inquired of.

But no offence is cognizable in the leet, unless it arose since the holding the last court. 2 *Hawk.* c. 10. s. 50.

And if a nuisance done within the jurisdiction of the leet be not presented in the leet, the sheriff in his torn cannot inquire of it; for that which is within the precinct of the leet is exempt from the torn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff to inquire thereof. 4 *Inst.* 261.

How far a presentment by the jury is traversable.

And it seems to be agreed that a presentment by twelve or more in the *torn* or *leet* of any offence within the jurisdiction of the court, being neither capital, nor concerning any freehold, subjects the party to a fine or amerciament without any further proceeding, and binds him for ever after the day on which it is found, and admits of no traverse to the truth of it: but if it concern the party's freehold, as if it charge him with not repairing such a highway, which he is charged to be bound to repair by the tenure of his land, it seems clear that he may remove it into the *King's Bench*, and traverse it; but not if it barely charge his person, as for digging a ditch in the highway, or for not cutting the branches of his trees hanging over it. 2 *Hawk.* c. 10. s. 75.

So also it seems that a man may in like manner traverse an indictment of an offence wholly out of the jurisdiction of a court leet; as of an affray or nuisance done out of the precinct of it, or of the non-appearance of a person at a leet, who lives out of the precinct of it. *Ibid.*

But if the affray or nuisance were within the precinct of the leet, it seems that no one can traverse it in respect of his not living in it; and that a person who lives within the precinct of a leet shall have no traverse to a presentment for not appearing at it. *Ibid.*

But it being enacted by *Magna Charta*, c. 17, which extends to the stewards of court leet, that *no sheriff, constable, or other bailiff of the king shall hold pleas of the crown*, it seems that at this day neither the torn nor leet have any power to try any traverse whatsoever, and therefore there is no remedy to avoid such presentments before them as are traversable, but by removing them into the *King's Bench.* 2 *Hawk.* c. 10. s. 76. 13.

Indictments in leet to be indented.

And to prevent the altering or embezzling of any indictment, it is enacted by 1 *Ed.* 3. *st.* 2. c. 17, that all indictments in the

* See 1 *Eliz.* c. 17, under title Fish.
† See 1 *Jac.* 1. c. 5, under title Alehouses.
‡ See 33 *Hen.* 8. c. 17, under title Manufactures, s. *Hemp and Flax.*

leet shall be by roll indented, one to remain with the indictors, and the other with the steward.

But the above act only relates to such indictments as were to be delivered over to the justices: presentments therefore are not within the meaning of it, and consequently need not to be indented. 4 *Burrows*, 1861.

And as the people had been frequently taken up, and money extorted from them, upon pretence of their having been indicted in their *torns* of *thefts* and *other misdeeds*, when in fact they had not been lawfully indicted, it was, by the statute of *Westminster*, 2. 13 *Ed.* 1. *c.* 13, which extends to leets *, enacted, that the sheriffs and bailiffs of franchises shall take no inquest but by twelve lawful men at the least, *who shall put their seals* to such inquisitions.

But this statute respects only such inquisitions as are a foundation for imprisonment, such as indictments for felony; and not inquisitions where the proceeding against the party is only by amerciament, and not imprisonment: therefore it is not necessary that the presentments in the court leet for misdemeanors, such as breaking the assize of bread and the like, should be sealed; and the universal practice is not to seal the same. 4 *Burrows' Rep.* 1867.

Presentments ought to be certain.

Presentments in the leet ought to be certain, that is to say, they ought to shew at what place the nuisance is made, and to say within the jurisdiction of the court, for it is the declaration of the king, which ought to be good to every common intent. *Bro. Leete*, 33. *Keilway*, 89.

And it ought to conclude to the *common* nuisance. *Cro. Jac.* 382. 3 *Keble*, 106.

For what causes a court leet may be forfeited.

The court leet being a franchise not intended to be granted for the private benefit of the grantee, but for the good of the public, from the more easy and convenient administration of justice, shall not only be forfeited by acts of gross and palpable oppression and injustice, but also by bare omissions in not making it answer the end of its institution; as in not punishing offenders in the same manner as the law requires; or in neglecting to hold a court when it ought to be holden (at least if such neglect be often repeated, and without reasonable excuse); or in not providing an able steward to discharge the office; or in not taking care to have such other officers, or other things as are necessary for the execution of justice, as constables, ale-tasters and like officers, and pillory and tumbrel †. 2 *Hawk.* c. 11. s. 5.

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* 2 *Inst.* 388. 4 *Burrows' Rep.* 1861.

† But it is said that a ville may be bound by a prescription to provide a pillory and tumbrel. 2 *Hawk.* c. 11. s. 5.

And if a leet be seized into the king's hands, all those who owed suit to it ought to come to the torn. 2 *Hawk. c.* 11. *s.* 4.

*After all it is to be observed, "that both the torn and the leet have been for a long time in a declining way; and that their business hath for the most part gradually devolved upon the quarter sessions*."*

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* 4 *Black. Com.* 275.

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FORMS OF PRESENTMENTS.

*The jurors for our lord the king upon their oath say, that* O O *by night in such a year, &c. at* U *within the jurisdiction of this court, the close of* P R *at* U *aforesaid broke and entered, and one capon, one goose, and one hen, of the value of —— there found, feloniously took and carried away; and that* O P *him received, entertained and comforted, knowing him to be a felon, and felony so to have committed:* and it is commanded to the *bailiff, that he as well the aforesaid* O O *as the aforesaid* O P *do attach, and to the next gaol lead, &c.* Of felony.

*They also say that* J *and* W *are deciners and have made default, &c.* Deciners in default.

*They also present upon their oath that* J R, R W, and J W, *are resiants within the precinct of the view of frank pledge aforesaid, and at this day hath made default, therefore, for every of them in mercy, as appears above their heads.* Default of suit.

*They also present, that* R B *and* C D *are chief pledges, and make default, therefore they in mercy.* Chief pledges in default.

*They also present, that* W G *is constable,* [or as the case is] *and is not here at the view of frank pledge to present that which to that office belongs, but hath made default, therefore he in mercy* 2*s*. Constables and other officers in default.

*They also present, that* J S *made an affray within the jurisdiction of this court, and drew blood, therefore he in mercy,* 3*s.* 4*d.* Affray.

*They also present, that at* U, *within the jurisdiction of this court, there is a certain ditch unscoured and uncleansed by the fault of* O O *of* —— *aforesaid* —— *to the common nuisance of all the lieges and subjects of our said lord the king; therefore he in mercy* 12d. *And it is commanded to him to scoure or cleanse the same before* —— *under the pain of* 2*s.* Nuisance.

*Letters*—sending of *threatening*. *See* FELONY (*within and without Clergy*).

*Letters stealing from the post-office.* See FELONY (*within Clergy, sec. Post-office*); and FELONY (*without Clergy, sec. Larcenies excluded Clergy* 10. and *sec. Robberies* 3).

*Lewdness.* See BAWDY-HOUSES.

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# LIBEL.

I. *What shall be said to be a libel.*

II. *Who are liable to be punished for a libel.*

III. *In what manner the offenders are to be punished.*

## I. *What shall be said to be a libel.*

What it is.

A LIBEL, in a strict sense, is taken for a malicious defamation, expressed either in printing or writing, and tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and expose him to public hatred, contempt, or ridicule. 1 *Hawk.* c. 73. *s.* 1.

But an indictment for publishing libellous matter, reflecting on the memory of a dead person, not alleging that it was done with a design to bring contempt on the family of the deceased, to stir up the hatred of the king's subjects against them, and to excite his relations to a breach of the peace, cannot be supported. 4 *Term Rep.* 126.

And it is neither the subject of criminal prosecution, nor of an action, to publish a true account of the proceedings in parliament, or of the courts of justice; and upon this principle the court of *King's Bench* refused to grant a criminal information against a bookseller for printing a report of the house of commons, though it reflected on the character of an individual. *K.* v. *Wright, Tr.* 39 *Geo.* 3. 8 *Ter. Rep.* 293, 298.

And this species of defamation receives an aggravation, because it is presumed to have been entered upon with coolness and deliberation, and to continue longer and propagate wider and further than any other scandal. 5 *Co.* 125. 2 *Lord Raym.* 416.

How far it is necessary that it should be in writing.

But not only written or printed scandal comes within the notion of a libel, but also any defamation whatsoever that is expressed either by signs or pictures, as by fixing up a gallows against a man's door, or by painting him in a shameful and ignominious manner. 1 *Hawk. c.* 73. *s.* 2.

And since the chief cause for which the law so severely punishes all offences of this nature, is the direct tendency of them to a breach of public peace, by provoking the parties injured and their friends and families to acts of revenge, which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which of all others are most sensibly felt; and since the plain meaning of such scandal as is expressed by signs or pictures is as obvious to common sense, and as easily understood by every common capacity, and altogether as provoking, as that which is expressed by writing, or printing, why should it not be equally criminal? 1 *Hawk. c.* 73. *s.* 3.

What degree of defamation will amount to a libel.

And as every person desires to appear agreeable in life, and must be highly provoked by such ridiculous representations of him, as tend to lessen him in the esteem of the world, and take away his reputation, which to some men is more dear than life itself; it hath therefore been held, that not only charges of a flagrant nature, and which reflect a moral turpitude on the party, are libellous, but also such as set him in a scurrilous ignominious light; for these equally create ill blood, and provoke the parties to acts of revenge, and breaches of the peace. 5 *Co.* 125. 1 *Keble*, 293. *Moore*, 627. *Rol. Abr.* 37.

Hence it hath been held, that words, though not scandalous in themselves, yet if published in writing, and tending in any degree to the discredit of a man, are libellous, whether such words defame private persons only, or persons employed in a public capacity; in which latter case they are said to receive an aggravation, as they tend to scandalize the government, by reflecting on those who are intrusted with the administration of public affairs; which doth not only endanger the public peace, as all other libels do, by stirring up the parties immediately concerned in it to acts of revenge, but also hath a direct tendency to breed in the people a dislike of their governors, and incline them to faction and sedition. 1 *Hawk. c.* 73. *s.* 7.

What certainty is requisite to make it a libel.

So not only scandal expressed in an open and direct manner, but also such as is expressed in a scoffing and ironical way, amounts to a libel; and the judges are to understand it in the same manner as others do, without any strained endeavours to find out loop-holes, or to palliate the offence, which in some

measure would be to encourage scandal; as where a writing in a taunting manner reckoning up several acts of public charity done by one, says, *You will not play the jew, nor the hypocrite,* and so goes on in a strain of ridicule to insinuate, that what he did was owing to his vain-glory; or where a writing pretending to recommend to one the characters of several great men for his imitation, instead of taking notice of what they are generally esteemed famous for, pitched on such qualities only, which their enemies charge them with the want of; as by proposing such a one to be imitated for his courage, who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar, or the like; which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expressly done so. 1 *Hawk. c.* 73. *s.* 4.

And from the same foundation it hath also been resolved, that a defamatory writing, expressing only one or two letters of a name, in such a manner, that from what goes before, and follows after, it must needs be understood to signify such a person, in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if strained to any other meaning, is as properly a libel as if it had expressed the whole name at large; for it brings the utmost contempt upon the law to suffer its justice to be eluded by such trifling evasions; and it is a ridiculous absurdity to say, that a writing which is understood by every the meanest capacity, cannot possibly be understood by a judge and a jury. 1 *Hawk. c.* 73. *s.* 5.

But it seems, that no writing whatsoever is to be esteemed *a libel*, unless it reflect upon some particular person. 1 *Hawk. c.* 73. *s.* 9.

Yet if a writing be replete with reflections against the constitution or civil government*; or repugnant to religion in general †, or full of obscene ribaldry; or of a tendency calculated to inflame the public mind against a particular body of men ‡: in all these and the like cases, though from the want of particular reflections it may not be in legal contemplation a libel, yet it is considered as a great *misdemeanor*, and may of course be punished as such by information or indictment. 2 *Roll. Abr.*

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* Under this head fall all the cases of seditious expressions.

† Such as writing against christianity in general: this therefore is not to be understood as including disputes between learned men upon particular controversies.

‡ As where a person published an account of a murder on a Jewish woman and her child, by certain Jews living near a particular street, because the child was begotten by a Christian; by reason of which several Jews residing in that street were assaulted in different parts of the city, and threatened with death.

78. 1 *Vent.* 324. 3 *Keble*, 637. 621. 841. *Cro. Jac.* 421. 2 *Strange*, 788. 834. 2 *Barnard, K. B.* 138. 166.

And it is not competent to a defendant charged with having published a libel, to prove that a paper similar to that for the publication of which he is prosecuted, was published on a former occasion by other persons, who have never been prosecuted for it. 5 *Term Rep.* 436.

How far proceedings in courts of justice are libellous.

And it seems to be clearly agreed, that no proceeding in a regular course of justice will make the complaint amount to a libel; for it would be a great discouragement to suitors to subject them to public prosecutions, in respect of their applications to a court of justice; and the chief intention of the law in prohibiting persons to revenge themselves by libels, or any other private manner, is to restrain them from endeavouring to make themselves their own judges, and to oblige them to refer the decision of their grievances to those whom the law has appointed to determine. 1 *Hawk. c.* 73. *s.* 8.

Therefore it hath been resolved, that no false or scandalous matter contained in a petition to a committee of parliament, or in articles of the peace exhibited to justices of peace, are libellous. 1 *Hawk. c.* 73. *s.* 8.

Also it is held that no presentment of a grand jury can be a libel, not only because persons who are supposed to be returned without their own seeking, and are sworn to act impartially, shall be presumed to have proper evidence for what they do, but also because it would be of the utmost ill consequence any way to discourage them from making their inquiries with that freedom and readiness which the public good requires. 1 *Hawk. c.* 73. *s.* 8.

Also it is holden by some, that no want of jurisdiction in the court to which such a complaint shall be exhibited will make it a libel; because the mistake of the court is not imputable to the party. But herein it is said by *Hawkins*, that if it shall manifestly appear from the whole circumstances of the case, that a prosecution is entirely false, malicious, and groundless, and commenced not with a design to go through with it, but only to expose the defendant's character, under the show of a legal proceeding, there can be no reason why such mockery of public justice should not rather aggravate the offence, than make it cease to be one, and make such scandal a good ground of an indictment at the suit of the king, as it makes the malice of their proceeding a good foundation of an action on the case, at the suit of the party, whether the court had a jurisdiction of the cause or not. 1 *Hawk. c.* 73. s. 8.

## II. *Who are liable to be punished for a libel.*

It is certain, that not only he who composes, or procures another to compose it, but also that he who publishes, or procures another to publish it, are in danger of being punished for it. 1 *Hawk. c.* 73. *s.* 10.

And it is said by *Holt*, Ch. J. that when a libel appears under a man's hand-writing, and no other author is known, he is taken in the manner, and it turns the proof upon him: and if he cannot produce the composer, it is hard to find that he is not the very man. 2 *Salkeld*, 419. 1 *Ld. Raym.* 417. 12 *Mod. Rep.* 220, 221.

And it is said not to be material, whether he who disperses a libel knew any thing of the contents or effects of it or not; for nothing could be more easy than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher would make him safe in dispersing them. 1 *Hawk. c.* 73. *s.* 10.

And the buying of a book or paper containing libellous matter, in a bookseller's shop, is sufficient evidence to charge the master with the publication, although it does not appear that he knew of any such book being there, or what the contents thereof were: and it will not be presumed that it was brought and sold there by a stranger: but the master must, if he suggests this, or any other circumstance in exculpation *, prove it. *Fitzgibbons*, 47. 5 *Burrows' Rep.* 2688.

Also it hath been said, that if he who hath either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it, in the presence of others, or lend or show it to another, he is guilty of an unlawful publication of it. 1 *Hawk. c.* 73. *s.* 10.

Also it hath been holden, that the copying of a libel shall be a conclusive evidence of the publication of it, unless the party can prove that he delivered it to a magistrate to examine it, in which case the act subsequent is said to explain the intention precedent. 1 *Hawk. c.* 73. *s.* 10.

But it seems that he who first writes a libel dictated by another, is thereby guilty of making it, and consequently punishable for the bare writing; for it was no libel till it was reduced to writing. 1 *Hawk. c.* 73. *s.* 10.

It seems to be a matter of doubt, whether the sending an

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* And this distinction may be proper to be observed; viz. circumstances which amount to a lawful excuse, or justification, are proper upon the trial, and can only be used there:

But circumstances merely of extenuation and alleviation, are irrelevant upon the trial, for they are immaterial to the verdict; yet they may be made use of when the defendant is brought up to receive judgment, to mitigate or lessen the punishment. 3 *Term Rep.* 428.

abusive letter, filled with provoking language, to another, will bear an action as for a libel, because here is no publication: but it seems to be clearly agreed, that the sending such letter, without other publication, is an offence of a public nature, and punishable as such, inasmuch as it tends to create ill blood, and causes a disturbance of the public peace, and if the bare making of a libel be an offence whether it be published or not, as it seemeth to be holden in some books, surely, saith *Hawkins*, the sending of it to the party reflected on must be a much greater crime, inasmuch as it so manifestly tends to a disturbance of the peace. 1 *Hawk. c.* 73. *s.* 11.

And on this foundation the court of *King's Bench* granted an information against a person for sending an abusive letter to another, therein calling him rascal and fool, although he swore that he wrote this to the party himself, and never made it public, being only a piece of private resentment; for the court held, that this method provoked persons to duelling. 2 *Barnard, K. B.* 102.

Also it seems to be agreed, that he who delivers a paper full of reflections on any person, in the nature of a petition to a committee of parliament, to any other persons except the members of parliament, may be punished as the publisher of a libel, in respect of such a dispersing thereof among those who have nothing to do with it. 1 *Hawk. c.* 73. *s.* 12.

But it seems that the bare printing of a petition to a committee of parliament (which would be a libel against the party complained of, if it were made for any other purpose than as a complaint in a court of justice), and delivering copies thereof to the members of the committee, shall not be looked upon as the publication of a libel, inasmuch as it is justified by the order and course of proceedings in parliament, whereof the king's courts will take judicial notice. 1 *Hawk. c.* 73. *s.* 15.

And it hath been resolved, that he who barely reads a libel in the presence of another, without knowing it before to be a libel, or who, hearing a libel read by another, laughs at it, or who barely says that such a libel is made on such a person, whether he speak it with or without malice, shall not in respect of any such act be adjudged the publisher. 1 *Hawk. c.* 73. *s.* 13.

But it seems to be agreed, that if he who hath either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it in the presence of others, or lend or shew it to another, he is guilty of an unlawful publication of it. *Moore*, 813. 9 *Co.* 59.

And for a libel written or printed in one county, and sent into another to be there published, the writer thereof may be indicted in the latter county; for one who procures another to

publish a libel is guilty of the publication in whatever county it is in fact published in consequence of his procurement. *The K. v. Judge Johnson, Mic. Ter.* 46 *Geo.* 3. 7 *Ter. Rep.* 65.

### *III. In what manner the offenders are to be punished.*

There can be no doubt, but that a person who writes or publishes a libel is subject to the action of the party injured, in which damages may be recovered proportionable to the injury sustained. *Skin.* 123. 4 *Comyns' Dig. tit.* "*Libel*," (C. 3.) 3 *Bacon's Abr. tit.* "*Libel*," (C.)

By indictment. Also by the common law, every libeller may be indicted; and if thereupon convicted, shall pay such fine, and also suffer such further punishment * as to the court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offender. 1 *Hawk. c.* 73. *s.* 16. *Comyns' Dig. tit.* "*Libel*," (C. 3.)

And it hath been adjudged, that libels, as having a direct tendency to a breach of the peace, are indictable before justices of the peace. 2 *Hawk. c.* 8. *s.* 38.

By information. A libeller may also be proceeded against by the way of information, wherein if convicted, he will be subject to the like punishment as upon an indictment. 1 *Hawk. c.* 73, *s.* 16. *Comyns' Dig. tit.* "*Libel*," (C. 3.)

But the court of *King's Bench* always exercises a discretionary power in granting an information for an offence of this nature, and will in many cases leave the party to his ordinary remedy by action on the case or indictment; and particularly where the application is made after a great length of time; or where the matter complained of as a libel, being a certain and specific charge, is not denied by the party complaining †.

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* As by imprisonment, putting in the pillory, and binding to the good behaviour. 5 *Co.* 125. 3 *Inst.* 174. *Cro. Car.* 175. 504. *Fortes.* 201.

And upon a defendant's being brought up to receive judgment, his conduct subsequent to the time when he was found guilty, may be taken into consideration, either by way of aggravating or mitigating the punishment: in general it is done for his benefit, in order to extenuate the offence; but it is also done, if required, to aggravate;‡ though in such cases the court will always take care not to inflict a greater punishment than the principal offence itself will warrant. 3 *Ter. Rep.* 432.

† See p. 57, supra, for an authority on this point.

‡ In this case the court permitted an affidavit, to which was annexed another pamphlet, written by the defendant after the trial (and which he called an *Apology*, but which was in fact more libellous than the first), to be produced by way of aggravating the punishment.

And it seems to be clearly agreed, that in an indictment or information for a libel, the party cannot justify that the contents thereof are true, or that the person upon whom it is made had a bad reputation; since the greater appearance there is of truth in any malicious invective, so much the more provoking it is; for, as my lord *Coke* observes, in a settled state of government, the party grieved ought to complain for every injury done him, in the ordinary course of law, and not by any means to revenge himself by the odious course of libelling, or otherwise. 5 *Co.* 125. 1 *Hawk* c. 73. s. 6.

Whether any thing of this kind can be justified.

But this rule does not extend where the party grieved proceeds by his action on the case: for that being to repair the *party* in damages for the injury done him, the defendant may justify the truth of the facts, and shew that the plaintiff has received no injury at all, in the same manner as in a common action of slander for words *spoken*. *Hobart*, 253. 11 *Mod.* 99. 3 *Black. Com.* 125, 126 *Buller's Nisi Pri. 8vo. ed.* 8.

The duty of juries on trials for libels.

Before the stat. 32 *Geo.* 3. c. 60, it had been considered, and the uniform usage, from the Revolution downwards, had been, for the judges to direct, upon the trial of an indictment or information for a libel, that *the only questions for the consideration of the jury were the fact of the publication, and the truth of the invendos: for that whether the publication were or were not a libel, was a question of law, for the consideration of the court, arising upon the matter appearing upon the record* *. The K. v. the Dean of *St. Asaph*, 3 Term Rep. 428.

But the 32 *Geo.* 3 c. 60, after reciting, that doubts had arisen, whether on such trials it was competent to the jury to give their verdict upon the whole matter in issue, IT IS DECLARED, that on every such trial the jury may give a general verdict of guilty or not guilty, upon the whole matter in issue; and shall not be required or directed by the court or judge, to find the defendant guilty, merely on the proof of the publication by such defendant, of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information: but it is provided, that on every such trial, the court or judge shall, according to their discretion, give their opinion and directions to the jury on the matter in issue,—that the jury may find a special verdict;—and that the defendant, if found guilty, may move in arrest of judgment in like manner as in other criminal cases. s. 1, 2, 3, 4.

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* For it is the province of a jury barely to resolve and find what the fact is. They do not know, nor are they presumed to know the law; no issue can be joined of matter in law; no jury can be charged with the trial of matter in law, barely; no evidence ever was, or can be given to a jury of what is law or not; nor no such oath can be given to, or taken by a jury, to try matter in law. *Vaughan's Rep.* 143, 144.

After judgment on the defendant for a libel, the court refused to make an order on the prosecutor to deposit the original libellous papers with the officer of the court. *K.* v. *Cator, Tr. Ter.* 42 *Geo.* 3. 2 *East's Rep.* 861.

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An indictment for sending a scandalous and libellous letter to a person. *Cr. Cir.* 421.

Middlesex. { THE *jurors for our lord the king upon their oath present, that* G D, *late of the parish of* St. Giles in the Fields, *in the county of* Middlesex, *gent. being a person of evil name, fame, and dishonest conversation, on the seventh day of* September, *in the first year of the reign of our sovereign lord* George *the Third, now king of* Great Britain, *&c. and divers other days and times before, at the parish aforesaid, wickedly contriving and intending one* J T, *gent. to deprive of his good name, fame, and credit, and him the said* J T *to bring to the greatest hatred, scandal, contempt and infamy, with all the liege subjects of our said lord the king; and such contrivance, intention, and practice to complete, perfect, and render effectual, he the said* G D, *on the said seventh day of* September, *in the year aforesaid, at the parish aforesaid, in the county aforesaid, a certain false, scandalous, and libellous writing against the said* J T *falsely, maliciously, and scandalously did frame and make, and in the name of him the said* G D *then and there did cause to be writ and published, in the form of a letter, directed to him the said* J T, *the tenor of which said writing is as followeth:* To J T *These.* "*Scoundrel, (meaning him the said* J T*) it may not be amiss to* "*acquaint you (meaning him the said* J T*), as the time draws* "*near, you (meaning the said* J T*) may be preparing yourself* "*(meaning again the said* J T*) for a trial at* Chelmsford, *for* "*stealing the turkies out of Mr.* L's *yard, when I (meaning himself* "*the said* G D*) hope you'll meet your deserved fate as to that* "*fact, and wish it had been of a higher nature, that you (mean-* "*ing again the said* J T*) might have had judgment of death,* "*and been hanged, you rogue, murderer and thief (meaning that* "*he the said* J T *was a rogue, murderer, and thief), so that I* "*(meaning himself the said* G D*) might have made a holiday to* "*see you (meaning the said* J T*) sing a neck psalm, and perish* "*according to law, you hellhound: (meaning the said* J T*). Sub-* "*scribed* G D." *(meaning himself, the said* G D.*) And that he the said* G D, *with intention to scandalize the said* J T, *and to bring him to contempt, the said false, malicious, and scandalous libellous writing, so as aforesaid framed and made, afterwards, to wit, on the said seventh day of* September, *in the year aforesaid, and divers other days and times then aforesaid, at the parish aforesaid,*

*in the county aforesaid, to divers other subjects of our said lord the king, then and there present, falsely, maliciously, and scandalously did deliver, and cause to be delivered, to the great scandal, infamy, and damage of the said J T. to the evil example of all others in the like case offending, and against the peace of our lord the king his crown and dignity.*

*Linen.*—For the Duties on printed Linens, see EXCISE.

———For the true manufacturing of, see MANUFACTURES, *&c.*

———stealing from the Bleaching-grounds. See FELONY (*without Clergy,* Sec. *Larcenies excluded Clergy*).

———breaking into Manufactories. See FELONY (*without Clergy,* Sec. *Manufactories breaking into*).

*Ling.*—burning of it. See GAME.

*Lord's Day,*—not resorting to Church on. See CHURCH.

———Profanation of. See SABBATH.

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## LOTTERIES.

IT will be proper to arrange the laws concerning lotteries in the following order, viz.

*I. Private lotteries.*

*II. Foreign lotteries.*

*III. State lotteries.*

### *I. Private lotteries.*

By 10 & 11 *W.* 3. c. 17, all lotteries are declared to be public nuisances, and all patents for lotteries are void and against law. *s.* 1. Lotteries public nuisances.

Keeping a private lottery.

No person shall keep open, or draw, or throw at, any lottery, either by dice, lots, cards, balls, numbers, figures, or any other way whatsoever; and every person that shall open or shew to be paid or drawn at, any lottery, shall forfeit 500*l.* one third part to his majesty, one other third to the poor of the parish, and the other third with double costs to the party that shall sue for the same; and the parties offending shall likewise be prosecuted as common rogues. *s.* 2.

Persons playing thereat.

Every person that shall play, throw, or draw, at any lottery, shall forfeit 20*l.* one third part to his majesty, one other third to the poor of the parish, and the other third with double costs to the party that shall sue for the same. *s.* 3.

Power of justices.

And by 9 *Ann. c.* 6. justices of peace, mayors, bailiffs, head officers, constables, and other her majesty's civil officers, are required to use their utmost endeavours to prevent the drawing of any such unlawful lottery; and every person who shall set up, or *publish* the setting up, any unlawful lottery with intent to have such lottery drawn, shall forfeit 100*l.* one third part to her majesty one other third to the poor of the parish, and the other third with costs to the party who shall sue for the same. *s.*5.

Insurances.

By 10 *Ann. c.* 26, every person who shall keep any office for making insurances on marriages, births, christenings, or service, or any office under the denomination of sales of gloves, of fans, of cards, of numbers, of the queen's picture, for the improvement of small sums, or the like offices under the pretence of improving small sums, shall forfeit 500*l.* one third part to her majesty, one other third to the poor of the parish, and the other third with costs to the person who shall sue for the same; and every printer or other person, who shall publish the keeping any such office, shall forfeit 100l. to be distributed as the penalty last mentioned. *s.* 109.

Sales of lands, goods, or chances by lottery.

By 8 *Geo.* 1. c. 2, every person who shall set up or keep any office or place under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money; or who shall sell or expose to sale any houses, &c. *by way of lottery*, or by lots, tickets, numbers, or figures; or shall make, print, advertise, or publish proposals or schemes for advancing small sums of money by several persons amounting in the whole to large sums, to *be divided amongst them by the chances of the prizes in any public lottery*; or shall deliver out tickets to persons advancing such sums, to entitle them to a share of the money, according to such proposals or schemes: or shall make, print, or publish, any proposal or scheme of the like kind, and shall be thereof convicted on the oath of one witness, by two justices, where the offence shall be committed or the offender found, shall (over and above any former penalties) forfeit 500*l.* one third to the crown, one-third to the informer, and the remaining third to the poor of the parish where the offence shall be committed, to be levied by distress and sale by warrant of the

justices, and shall also be committed to the county gaol for one year, and till the 500*l.* be paid: but persons aggrieved may appeal to the next quarter sessions. *s.* 36.

And all persons who shall be adventurers in such sales or lotteries, or shall contribute to such sales or lotteries, shall forfeit double the sum contributed, to be recovered in the courts at *Westminster*, with costs; one moiety to the crown, the other to the informer. *s.* 37. Adventurers.

And by 12 *Geo.* 2. *c.* 28, *for explaining and making more effectual* 10 & 11 *Wil.* 3. *c.* 17, 9 *Ann. c.* 6, and 8 *Geo.* 1. *c.* 2, if any person shall set up, continue, or keep any office or place, under the denomination of a sale of houses, land, advowsons, presentations to livings, plate, jewels, ships, goods, or other things by way of lottery, or by lots, tickets, numbers or figures, cards or dice; or make, print, advertise or publish, or cause to be made, &c. schemes for advancing small sums of money by several persons, amounting in the whole to large sums to be divided among them *by chances of the prizes in some public lottery allowed by act of parliament*, or to deliver or procure to be delivered tickets to the persons advancing such sums, to entitle them to a share of the money, according to such schemes; or expose to sale any houses, *&c.* by any game or device to be determined by any lot or drawings, whether it be out of a box or wheel, or by cards or dice, or by any machine or device of chance of any kind; such person being convicted before a justice for any county or division, or before the mayor, or other justice for any city or town-corporate, upon the oath of one witness, or upon the view of such justice, or on the confession of the party, shall forfeit 200*l.* to be levied by distress and sale of the offender's goods, by warrant of a justice; which forfeitures after deducting the charges of prosecution, shall be applied one-third to the informer, and two-thirds to the poor of the parish where such offence is committed; excepting the said two-thirds of forfeitures incurred by any person within the city of *Bath*, which two-thirds shall be applied to the use of the poor in the hospital for poor persons resorting to the said city for the benefit of the waters. *s.* 1.

And such justices may summon any person other than the party accused, to give evidence: and in case he neglect to appear, or refuse to give evidence, he shall forfeit 50*l.* to be levied by distress and sale of goods, by warrant of the justice issuing such summons; and in case such person have not sufficient goods whereon to levy the said 50*l.* he shall be committed to the common gaol for six months. 18 *Geo.* 2. *c.* 34. *s.* 4.

And no person other than the plaintiff and defendant shall be incapacitated from being a witness, by reason of having played, betted, or staked at any prohibited game. *s.* 5.

And if any person convicted under the act (12 *Geo.* 2. *c.* 28.) shall not have sufficient goods whereon to levy the penalties, or do not immediately pay or give security for the same, the justice may commit such person to the common gaol, for not exceeding six months. 12 *Geo.* 2. *c.* 28. *s.* 8.

But any person aggrieved by the determination of any justice or mayor, may appeal to the next general quarter sessions, giving reasonable notice to the prosecutor, and entering into a recognizance before some justice, with two sureties, on condition to try such appeal at the next quarter sessions; and every such appeal shall by the said next general quarter sessions be finally determined, and not afterwards; and in case such judgment or conviction be affirmed, the party appealing shall pay unto the prosecutor treble costs. *s.* 5.

And no such conviction or judgment shall be set aside by the quarter sessions for want of form, in case the facts alleged in the conviction be proved; nor shall it be removable by *certiorari*, until judgment be given thereupon by the quarter sessions. *s.* 6.

And no *certiorari* shall issue to remove the record from the quarter-sessions, until the party against whom such conviction is made, before the allowance of such writ, find two sureties to become bound to the prosecutor in 100*l.* with condition to prosecute the same with effect within six calendar months, and to pay unto the prosecutor treble costs, in case such conviction be affirmed. *s.* 7.

And if any justice or mayor neglect to do what is required of him by this act, he shall forfeit 10*l.* one moiety to any person who shall sue, and the other to the poor of the parish, to be recovered with costs in any court of record, or at the assizes, within six months. *s.* 9.

And all sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods or other things, by any game, lottery, machine, engine, or other device to be determined by chance or lot, are hereby declared to be void: and all such houses, &c. so exposed to sale, shall be forfeited to such person who shall sue for the same in any court of record, or at the assizes. *s.* 4.

Ace of hearts, pharaoh, basset, and hazard, deemed lotteries.

The games of the ace of hearts, pharaoh, basset, and hazard *, are hereby declared to be games or lotteries within the meaning of the said acts; and all persons who set up or keep

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* In the case of *The K.* v. *John Liston*, *Tr. Ter.* 33 *Geo.* 3, which was a conviction before two justices, on the above act of 12 *Geo.* 2, the information charged the defendant with having, on 25th *August*, set up, maintained, and kept a certain fraudulent game, *to be determined by the chance of dice*, under the denomination of the game of hazard; and the evidence shewed, that the defendant was master

the said games, shall be liable to all the penalties by this act inflicted upon persons keeping lotteries; and be prosecuted in like manner. *s.* 2.

Players thereat.

And every person who shall be an adventurer in any of the said games, lotteries or sales, or shall pay, set at, stake or punt, at either of the said games of the ace of hearts, pharaoh, basset and hazard, shall forfeit 50*l.* to be recovered as aforesaid. *s.* 3.

Passage, and other games with dice except backgammon.

Also by 13 *Geo.* 2. *c.* 19, the game of *passage*, and all other games with one or more dice, or with any other instrument or device in the nature of dice, having figures thereon (backgammon and the other games now played with the backgammon tables only excepted), shall be deemed games or lotteries by dice, within 12 *Geo.* 2. *c.* 28, and every person who shall set up or keep any office, table or place, for the said prohibited games, shall forfeit the penalties by the said act inflicted upon persons who keep games or lotteries; and every person who shall play, set at, stake, or adventure at, the said prohibited games, shall forfeit the penalties by the said act inflicted upon persons who play at the games in the said act mentioned, to be prosecuted and convicted, and the penalties sued for, and disposed of in like manner as by the said act is directed. *s.* 9.

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of the house, and acted as master of a hazard table there, on 25th *August, but no mention was made of any dice being then used;* but on the 26th of *August* one witness saw a dice box and dice on the table, round which many persons were assembled, the play having been discontinued on the witness's entering the room. This conviction being removed by *certiorari* into the court of *King's Bench*, it was there, amongst other things, objected, that the evidence did not support the charge, by reason that there was no evidence that there were any dice used on 25*th August*, the day mentioned in the information; and that the informer could not resort to any other day; but that even if he could, the evidence of the transaction on 26th *August* could not support the information, because the witness only swore that dice were used on that day, not that the game of *hazard*, or indeed any other game, was then played. And there being no evidence that hazard is a game played with dice, the court could not intend it; for it does not appear but it may be played with cards, and the information must be strictly proved as laid. But the court over-ruled all the objections that were taken; and as to this in particular, said that the charge was for setting up, maintaining, and keeping a certain game to be determined by the chance of dice, called hazard; and the proof was that certain persons were found in the house playing at hazard; and whether hazard were played with cards or with dice, it is equally prohibited by the act. But if it were necessary to be stated, it did appear that a dice box and dice were found on the table on the subsequent day, which, from the manner in which they were found, was sufficient to warrant the justices to conclude that the game of hazard was then played, and the justices were not confined to evidence on the particular day *. 5 *Term Rep.* 338.

* See this last point also in vol. i. p. 571.

But these acts are not to hinder any persons from gaming or playing at any of the games mentioned, within any of his majesty's royal palaces where his majesty then resides. 12 *Geo.* 2. c. 28. s. 10. 13 *Geo.* 2. *c.* 19.

Privilege of parliament not allowed in prosecutions.

And no privilege of parliament shall be allowed to any person against whom a prosecution shall be commenced for keeping any common gaming house, or place for playing at any prohibited game. 18 *Geo.* 2. c. 34. *s.* 7.

Also by 27 Geo. 3. c. 1. s. 2, *no pecuniary penalty incurred by any person offending against such parts of the acts* 8 Geo. 1. c. 2. and 12 Geo. 2. c. 28, *as touch and concern* LOTTERIES, *shall be recovered before any justice, but shall be sued for by any person within six months, in any court of record at* Westminster ; *and one moiety of the penalties shall go to his majesty, and the other with costs to the person who shall sue ; in which action a* capias *shall issue on the first process, and the defendant be held to bail, so as the bail in no case exceeds* 500*l.*

*As touch and concern* LOTTERIES.] This statute, which takes away the summary jurisdiction of magistrates over the offences concerning the lottery, only extends to STATE LOTTERIES, and does not repeal their power over games of chance, or lotteries prohibited by 12 *Geo.* 2. *c.* 28. *The K.* v. *John Liston, Tr. Ter.* 33 *Geo.* 3. 5 *Term Rep.* 338.

## *II. Foreign Lotteries.*

Foreign lotteries.

By 9 *Geo.* 1. *c.* 19, If any persons shall, by colour of any authority from any foreign prince or state, set up or keep any lottery, or undertaking in the nature of a lottery, or shall make, print, or publish, any proposal or scheme for such lottery, or shall within this kingdom sell or dispose of any tickets in any foreign lottery, and shall be convicted on the oath of one witness before two justices, *&c.* where such offence shall be committed, or the offender found, such offender shall (over and above any former penalties) forfeit 200*l.* one-third to the crown, one-third to the informer, and the remaining third to the poor of the parish, to be levied by distress and sale of goods by warrant of the justices, and shall also be committed to the county gaol for one year, and till the said sum be satisfied. *s.* 4.

But persons aggrieved by the judgment of the justices may appeal to the next quarter sessions. *s.* 5.

And by 6 *Geo.* 2. c. 35, if any person shall sell or deliver any ticket in any foreign lottery, and shall be convicted upon action or information, or upon oath or affirmation of one witness before two justices of the peace, where such offence shall be committed, or the offender found, the person so convicted shall forfeit 200*l.* one third part to his majesty, one third to him who shall make information of the offence, and the

remaining third to the poor of the parish, to be levied by distress and sale of goods; and shall also be committed to the county gaol for one year, and from thence till the sum of 200*l.* be paid. *s.* 29.

But any person aggrieved by the judgment of such justices shall have liberty to appeal to the next quarter sessions. *s.* 30.

Irish lotteries.

But by 22 *Geo.* 3. *c.* 47, it shall be lawful to buy and sell, within all parts of *Great Britain* (except *Oxford* and *Cambridge*), any tickets in any lotteries authorized by any *Irish* act of parliament, or any shares of tickets in such *Irish* lottery. *s.* 1.

### *III. State lotteries.*

Lottery offices to be licensed.

By 22 *Geo.* 3. *c.* 47, no person shall, publicly or privately, open, set up, exercise or keep, by himself or any other person, any office for buying, selling, or dealing in any tickets, or for registering the numbers of tickets in any lottery; or by writing, printing, or otherwise, publish the setting up or using any such office without first taking out a licence from the commissioners for stamps, for which licence there shall be paid, above all other payments, fifty pounds, towards defraying the expenses of executing this act. *s.* 2, 3.

But no licence shall be granted for any lottery office within *Oxford* and *Cambridge*. *s.* 5.

And such licence shall set forth the name and abode of the person; and also the place where such dealing shall be carried on; and such licence shall continue in force for twelve months from the date thereof, and no longer. *s.* 4.

And all persons to whom any licence shall be granted, shall give security by bond to his majesty, in 1,000*l.* with two sureties; of which bond the condition shall be, that if such person shall well and truly conform to and observe all the regulations and provisions of this act, so far as he shall be concerned therein, such bond shall be void, but otherwise to be and remain in full force; and the commissioners are to take the said bond; and if at the end of the year it shall appear that the person hath acted in conformity to this act, then the said commissioners are to cause such bond to be delivered up and cancelled; but otherwise they shall (unless they see reason to forbear) cause every such bond to be prosecuted. *s.* 9.

And if any person shall be convicted of any offence against this act, whether on prosecution of the bond, for any penalty under this act, such conviction shall operate as a forfeiture of such licence and the same shall be void; and the commissioners may refuse to grant to the person convicted a licence in future. *s.* 10.

And every person licensed shall cause the words, *licensed to deal in lottery tickets*, to be expressed, in legible characters,

upon or near the door in the front of his office, on pain to forfeit 20*l*. for every day. *s*. 7.

And every person who shall open, set up, or keep, any office for buying, selling, or otherwise dealing in such lottery tickets, or any shares thereof, or for registering the numbers thereof, without such licence, or in any place besides that named in the licences, or in any other manner contrary to such licence, or this act, shall forfeit 100*l*. *s*. 6.

And if any person shall counterfeit, or cause to be counterfeited, or assist in counterfeiting, any licence, or shall fraudulently alter, or cause to be altered, or assist in altering, such licence, or knowingly make use thereof, he shall forfeit 500*l*. one moiety to his majesty, and the other to him that shall sue in any court at *Westminster*; and also be subject to imprisonment, for not exceeding six months, as the court shall appoint. *s*. 8.

Tickets divided into shares to be deposited at the stamp-office.

Every ticket, before it shall be divided into or sold in shares, shall be brought to the stamp-office, and there deposited with the receiver general, or person appointed by him, who shall give a receipt in writing for the same. *s*. 15, 17.

And the person who shall so deposit any ticket shall pay for each share into which it shall be divided, two-pence. *s*. 20.

And every share shall be on a piece of written or printed paper, impressed with some stamp prescribed by the commissioners; but no more shares are to be stamped for one ticket than, being added together, shall amount to a whole ticket, nor shall any smaller share than a sixteenth, or share other than permitted by this act, be stamped, on pain of 50*l*. on the officer delivering the same. *s*. 16.

And a book shall be kept, wherein shall be registered the number of every ticket deposited in the office, and the shares thereof, which may be inspected on payment of two-pence. *s*. 19.

And every ticket so deposited, shall remain until the expiration of three days after the drawing thereof, and then be returned to the owner, upon producing the receipt: and in case it shall remain unclaimed at the end of two years from the day of drawing thereof, the money (if any) to arise thereby shall be applied in defraying the expences of this act. *s*. 18.

Office hours.

No office shall be open for transaction of business before eight in the morning, nor after eight in the evening, except on the *Saturday* preceding the drawing of any lottery; on pain of 50*l*. *s*. 11.

As to selling of shares.

And if any person shall sell any smaller share than a sixteenth, or publish any proposals for the same; or if any person shall sell any share of any ticket not being the owner thereof*, or

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* By 5 *Geo*. 1. *c*. 9, all persons buying, selling, subscribing, or

any share beyond such number of shares as, being added together, shall be equal to the whole ticket; or if any person shall sell, or agree to sell, any share otherwise than by a written or printed agreement, stamped as aforesaid, he shall in either of the cases forfeit 50*l*. *s*. 12, 14, 21.

And the sale of every smaller share than a sixteenth shall be void. *s*. 12.

Felony to forge receipts or stamps.

And if any person shall forge, or cause to be forged, or assist in forging, any receipt on the deposit of any ticket to be divided into shares, or any stamp required to be put on shares; or shall alter, or cause to be altered, or assist in altering, such receipt or stamped share, whether by adding or taking away any word, letter, or figure, in such receipt or stamped share, or shall fraudulently make use of such forged or altered receipt or stamped share, such person shall be guilty of felony. *s*. 22.

Penalty on illegal chances or insuring.

And it shall not be lawful for any person to sell the chance of any ticket for a day, or any less time than the whole time of drawing—or to insure for or against the drawing of such ticket—or to receive any money or goods in consideration of any agreement to repay any sum—or to deliver the same, or other goods, if such ticket shall prove fortunate or unfortunate—or on any other chance or event relative to the drawing of such ticket, whether as to their being drawn fortunate or unfortunate—or the time of their being drawn, or otherwise howsoever—or under any pretence, device, form, denomination, or description, whatsoever, to promise or agree to pay any sum—or to deliver any goods—or to do or forbear doing any thing for the benefit of any person, whether with or without consideration, on any event or contingency relative or applicable to the drawing of such ticket—or to publish any proposal for any of the purposes aforesaid; and if any person shall offend in any of the matters aforesaid, he shall forfeit 50*l*. and the contract in every such case shall be void. *s*. 13.

And moreover by 27 *Geo*. 3. *c*. 1, every person who shall publicly or privately open, set up, continue, or keep, by himself, or by any other person, any office, for buying, selling, or otherwise dealing in any tickets, or shares of tickets, in any

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Selling shares not having the original ticket.

taking subscriptions for the purchase of chances of any tickets made out in pursuance of any act for a public lottery, or on the numbers of such tickets, without having the original tickets in their custody and right, shall forfeit 500*l*. *one third to the king, one third to the poor of the parish, and the other third with double costs to the party that shall sue; and likewise be prosecuted as a common rogue*; and every such offender shall for every such chance so sold or subscribed forfeit 100*l*. over and above any former penalties; one moiety to the crown, and the other to such person as in his own right shall at the commencement of the drawing of such lottery be possessed of the ticket on which such chance shall be sold or subscribed for. *s*. 43.

lottery established by any *British* or *Irish* act, or for registering tickets without a licence, and all persons (except as herein after) who shall by himself, or by any other person, or for his account, or on the account, or as the servant, agent, or factor, of any other person, sell, or cause to be sold, the chance of any ticket, or any share thereof, for a day, or part of a day, or any less time than the whole time of drawing then to come; or insure, or cause any other person to insure, for or against the drawing of any such ticket: or shall receive any money or goods whatsoever, in consideration of any agreement or promise to repay any sum of money, or to deliver the same, or any plate, jewels, or other goods whatsoever, if any such ticket shall prove fortunate or unfortunate, or upon any other chance, event, or contingency, relative to the drawing of such ticket, whether as to the time of their being drawn, or otherwise howsoever, shall be deemed rogues and vagabonds, within 17 *Geo.* 2. and shall be punishable as such; and all persons found offending may be apprehended and conveyed before some justice, as in the said act is directed: and the justice before whom such offender shall be brought, such offender not having been sued for the same offence, without covin, or collusion, in some court of record, shall, upon proof of the offence, in manner by the said act directed, order such offender to be sent to the house of correction, there to remain until the next general or quarter sessions; and such sessions shall enter upon the examination of the case, and proceed therein according to the directions of the said act; and all justices, mayors, bailiffs, constables, headboroughs, and other civil officers, are required to use their utmost endeavours to prevent the committing of any of the offences aforesaid, by all lawful ways, and shall be indemnified in execution of this act. *s.* 2.

And all other powers, punishments, and provisions, for apprehending, securing, and punishing rogues and vagabonds, not hereby altered, shall be carried into execution in relation to the persons hereby declared to be rogues and vagabonds. *s.* 3.

Offenders may also be prosecuted under former acts.

Also by the same act 27 *Geo.* 3. *c.* 1, it is declared that the acts 8 *Geo.* 1. *c.* 2, 12 *Geo.* 2. *c.* 28, and 22 *Geo.* 3. *c.* 47, shall be put in execution. *s.* 1.

*But no pecuniary penalty incurred by any person offending against such parts of the said acts, as touch or concern lotteries, shall be recovered before any justice*, but shall be sued for by any person, within six months, and recovered in any court of record at *Westminster*; and one moiety shall go to his majesty, and the other with costs to the person who shall sue; and a *capias* shall issue the first process; specifying therein the amount of the penalty sued for, whereof an affidavit shall be first made and filed; and the defendant shall, in such case, be obliged to

give bail, so as the bail, in no case, exceed five hundred pounds. *s.* 2.

But offenders are not to be prosecuted both as vagabonds and for the penalty.

But no person shall be prosecuted by both the ways by this act prescribed; nor shall any person against whom any action hath been carried on with effect, be liable to imprisonment as a rogue and vagabond for the same offence; and when any person shall be convicted and sentenced to imprisonment as a rogue and vagabond, such person shall not be liable afterwards to be prosecuted for any penalty for the same offence. *s.* 7.

What insurance shall be legal.

But it shall be lawful for any person actually possessed of any whole undrawn ticket, to make any insurance on his ticket, for indemnifying himself against any loss which he may sustain by such ticket, so as every contract for such insurance be reduced into writing (without stamps) before the time of such ticket being drawn; and so as the name of the possessor, the number, the lottery, and the amount of the premium received thereon, be inserted in such agreement, and so as every insurance be made upon a whole ticket, on condition to pay the full value thereof, and not otherwise. *s.* 4.

And no such insurance shall be for a less time than shall remain of the drawing of the lottery; and every ticket insured shall be deposited, by the person insuring the same, with the receiver general, or some person appointed by him to receive the same; but such ticket may be assignable together with such insurance. *s.* 5.

But if any person not licensed shall grant such insurance, or take any premium for the same, he shall be subject to the like pains as persons keeping lottery offices without licence. *s.* 6.

All fees paid at the stamp office, and all penalties and shares thereof, which shall belong to his majesty, shall be paid to the receiver general, who shall keep a separate account thereof, and thereout pay the expense of executing this act, and the residue into the exchequer. 22 *Geo.* 3. *c.* 47. *s.* 23. 27 *Geo.* 3. *c.* 1. *s.* 9.

The form of a conviction of a mountebank doctor upon stat. 12 *Geo.* 2. *c.* 28. *s.* 1. (see page 175, supra) for exposing plate to sale by a lottery.

Wilts, to wit. { *BE it remembered that on the* —— *day of* —— *in the* —— *year of the reign of our present sovereign lord* George *the Third, by the grace of God of* Great Britain, France, *and* Ireland *king, defender of the faith, and so forth, at* —— *in the county of* Wilts *aforesaid, one* P E, *of* —— *in the county aforesaid, mason, in his own proper person, comes before me* J M, *esq. one of the justices of our said sovereign lord the king assigned to keep the peace of our said lord the king, in and for the said county, and also to hear and determine divers*

*felonies, trespasses, and other misdemeanors in the same county committed, and as well for the poor of the parish of* —— *aforesaid, where the offence hereinafter mentioned was committed, as for himself, exhibits unto me the justice aforesaid a certain complaint and information, and thereby informeth me, the said justice, that* J L, *of* —— *aforesaid, in the county aforesaid, practitioner in physic, did after the 24th day of* June, 1739*, *to wit, on the* —— *day of* —— *last past, at* —— *aforesaid in the county aforesaid,* expose to sale plate, to wit, one silver bowl and six silver tea spoons, by a method depending upon and to be determined by a lottery or drawing, by a device of chance, *against the form of the statute in that case made and provided, whereby the said* J L *hath forfeited the sum of* 200l. *of lawful money of* Great Britain ; *to be levied, paid, and distributed as the law in that behalf directs ; and thereupon the said* P E *prays judgment in the premises, and that he may have one third part of the said forfeiture, according to the form of the statute in such case made and provided, and that the said* J L *may be summoned to answer the said premises, and to make defence therein before me the said justice. And afterwards, to wit, on the* —— *day of* —— *aforesaid, in the said* —— *year of the reign of our said sovereign lord the king, at* —— *aforesaid in the county aforesaid, being the time and place appointed by my summons on the above written information, the said* J L *having been by me duly summoned, appeareth, and pleadeth that he is not guilty of the offence, in manner and form as in the above written information is mentioned and set forth. Nevertheless on the said* —— *day of* —— *aforesaid, in the year aforesaid, at* —— *aforesaid, in the county aforesaid, one credible witness, to wit,* A B, *of* —— *in the county aforesaid, spinster, cometh before me the said justice, and before me the said justice upon her corporal oath upon the holy gospel of God, by me the said justice administered, in the presence and hearing of the said* J L, *deposeth, sweareth, and saith, that on the said* —— *day of* —— *last past, at* —— *aforesaid, in the county aforesaid, the said* J L *did exhibit and expose to sale on a certain stage set up and placed there by the order of him, the said* J L, *one silver bowl and six silver tea spoons as prizes, by a method depending upon and to be determined by a lottery or drawing by a device of chance, and thereby obtained a considerable sum of money, in the manner following, that is to say, that he, the said* J L, *did on the said* —— *day of* —— *last, at* —— *aforesaid, in the county aforesaid, in an open and public manner, on the said stage so erected and placed as aforesaid, receive and take of and from several persons, to wit, one hundred persons, and more, then and there assembled, one shilling each, together with a mark, to wit, some a handkerchief, others an apron, and*

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* The time when the act 12 *Geo.* 2. *c.* 28. took effect.

*others a glove, all which said marks were taken or placed by the said* J L, *or his servants, in a heap or parcel together upon the said stage; and when no more money or marks were thrown up to the said* J L, *upon the said stage: he the said* J L, *or his servants, took out a heap or parcel of packets and papers containing salve and powders, then and there lying on the said stage, as many of the same packets or papers of salve and powders as there were prizes intended to be delivered out, to wit, three prizes, that is to say, one silver bowl, three silver tea spoons, and three other silver tea spoons, then opened the same and put into each of them another paper containing salve and powders, on which was placed, written, or printed certain seals, letters, or marks, denoting it to be a prize, and what such prize consisted of, and that whoever had the lot, good fortune, or chance to receive such packet and paper of salve and powders would be entitled to such prize; then closed up the said packets or papers of salve and powders so opened for the purpose aforesaid, and put them to the other packets or papers of salve and powders in the heap on the said stage which contained no prizes, and mixed them all together, making the number of packets or papers of salve and powders equal to the number of marks that were thrown up and shillings that were received; and then called two boys from amongst the crowd, and employed the said two boys to take up a packet or paper of salve and powders out of the heap on the said stage, which was delivered to the said* J L, *or his servants, who then and there took up one of the said marks, proclamation then being made for the owner thereof to claim the same, to whom was delivered the mark together with one of the said packets or papers of salve and powders so drawn and taken up by the said boys as aforesaid; and the said* J L *proceeded in the same manner until the said boys had drawn up all the said packets or papers of salve and the said* J L *and his servants had delivered out all the said marks, together with the said packets or papers of salve and powders, as well those containing the seals, letters, or marks denoting them to be prizes as aforesaid, as others so drawn, from the heap on the said stage by the said boys as aforesaid; after which the fortunate persons to whose lots the said packets or papers of salve and powders fell which contained the papers of salve and powders whereon was placed, written, or printed, the said seals, letters, or marks, as aforesaid, attended at or on the said stage, and had their respective prizes delivered to them by the said* J L, *or his servant or servants: and thereupon the said* J L *is by me the said justice asked what he hath to say or allege in his defence; but he the said* J L *does not produce nor does he say he can procure any evidence to contradict the proof aforesaid; nor does he shew unto me any sufficient cause why he the said* J L *should not be convicted of the premises aforesaid; wherefore it manifestly appears to me the justice aforesaid that the said* J L *is guilty of the pre-*

*mises charged upon him in and by the said information: it is therefore considered and adjudged by me the said justice that the said* J L *be convicted, and he is by me accordingly convicted of exposing to sale plate, that is to say, one silver bowl and six silver tea spoons, by a method depending upon and to be determined by a lottery or drawing by a device of chance, against the form of the statute in that case made and provided. and for his offence aforesaid hath forfeited the sum of* 200l. *to be levied, paid, and distributed as the statute aforesaid doth direct.* In witness whereof I the said justice to this present record of conviction have set my hand and seal at ——— aforesaid, in the county aforesaid, the — — day of ——— in the year of our Lord ———.

*Lunatics.* See IDEOTS and LUNATICS.

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# LYING-IN HOSPITALS.

Lying-in hospitals to be licensed by the quarter sessions.

BY 13 *Geo.* 3. *c.* 82, no hospital or place shall be used for the public reception of pregnant women, under public or private support, in any parish within *England*, unless a licence shall be first had from the justices of peace at one of their general quarter sessions. *s.* 1.

And all hospitals, houses, and places established, used, or appropriated for the public reception of pregnant women, and supported by charitable contributions or otherwise, for the purposes of the delivery or lying-in of such pregnant women, shall be deemed hospitals within the meaning of this act. *s.* 3.

And such justices are to grant such licence to any person who shall apply for the same, such person paying forty shillings for every licence to the clerk of the peace of the county, or to the town clerk of such city, as a perquisite for his trouble, and as a fund to defray the expense of the stamp and parchment used for the grant of such licence. *s.* 1.

And such licence shall be written on parchment, and stampt with a five shilling stamp; and a copy thereof shall be entered in a book kept by such clerk, and preserved as a public register amongst the records of the county or city, to be inspected by any person on payment of one shilling; and such licence shall be signed by two justices at their general quarter sessions, and shall intitle the person to whom granted to keep one hos-

pital, house, or place, and no more, for the public or charitable reception of pregnant women. *s.* 2.

And there shall be fixed and kept up over the door or public entrance of every such hospital, an inscription in large letters, in the following words: viz. LICENSED FOR THE RECEPTION OF PREGNANT WOMEN, PURSUANT TO AN ACT OF PARLIAMENT PASSED IN THE THIRTEENTH YEAR OF THE REIGN OF KING GEORGE THE THIRD, and the affixing such inscription shall be a condition in every licence; and in case such inscription shall not be kept over the door of such hospital, such licence shall become void. *s.* 4.

And the owner, keeper, governor, master, secretary, clerk, or other person, who shall have the management of such hospital or place, shall, before the admission of any pregnant woman into such hospital (unless prevented by sickness), take such woman before some justice, which justice is to examine her upon oath, whether she is married or single: And in case such pregnant woman shall not be able, at such admission, to go before such justice and be examined, then it shall be lawful, when such woman shall be recovered, to take her before such justice, to be examined as aforesaid; and such examination, taken upon oath, shall be entered in a book, to be provided and kept for that purpose by the owner, &c. and signed by the justice. *s.* 10.

But if any woman, on admission into such hospital, shall produce an affidavit, sworn by her before such justice for *London*, or for the county, or place wherein such hospital is situated, that she is a married or single woman, which affidavit shall be kept and filed at such hospital; then such woman shall not be liable to go before any justice, or to be further examined on oath as to her marriage. *s.* 11.

**Bastards born therein to follow the mother's settlement.**

And no bastard born in any such hospital shall be settled in or intitled to any relief as a parishioner, from the parish wherein such hospital shall be situated; but such child shall follow the mother's settlement, and gain a settlement in the parish where his mother was last legally settled. *s.* 5.

But this shall not extend to alter the law relative to the settlement of any bastard child where the mother's settlement cannot be ascertained. *s.* 9.

And if any woman shall be delivered of a bastard child in such hospital, such owner, &c. shall, four days before such woman shall be discharged, give a personal notice, or notice in writing, of such delivery, at the abode of the overseer or churchwarden of such parish wherein such hospital shall be situated; and such overseer or churchwarden is after such notice to attend at such hospital within the time so notified, and shall convey such woman before some justice, where such birth shall happen, who shall examine such woman upon oath relative to her last settlement, and certify, in writing, to such overseer or

churchwarden the whole of such examination, who shall cause the same to be deposited amongst the books and papers belonging to such parish. *s.* 12.

But if at any time such overseer or churchwarden shall, upon such attendance, be informed by such owner, &c. that such woman is not sufficiently recovered to be carried before such justice, such overseer or churchwarden shall wait till a further notice shall be given; and such notices shall be repeated as occasion may require; and such overseer and churchwarden is to pay attention thereto. *s.* 13.

And it shall be lawful for such owner, &c. to keep in such hospital such woman so delivered of a bastard child, till she shall be adjudged in a fit condition to be discharged, and until she shall have been examined before some justice, with respect to her settlement. *s.* 14.

But this act shall not empower any person to keep in such hospital any woman delivered of a bastard child longer than six weeks after the birth of such child, unless it be by her own consent. *s.* 15.

In case it shall become necessary to remove the mother of the child born a bastard, and the child, from the parish in which such hospital shall be situated, to the parish to which such woman shall belong, such parish, being within twenty miles of such hospital, &c. shall be chargeable with the payment of all charges attending such removals; such charges to be settled by any justice (who is hereby required to allow and settle the same) in and for the county in which the parish shall be situated to which such mother and child shall be removed: and if such charges, after settled, and demand made, directed to the churchwardens or overseers, shall not be paid within two days after demand, then it shall be lawful for one justice for the county in which the parish shall be situated to which such mother and child shall be removed, by warrant under his hand and seal, to levy the same by distress and sale of the goods of the churchwardens or overseers making refusal. *s.* 6.

But any person aggrieved by such removal or distress may appeal to the quarter sessions, within four months, first giving fourteen days notice at least, in writing, of the intention to bring such appeal, and of the matter thereof, to the party against whom such appeal is to be brought, and within two days after such notice, entering into recognizance, with two sureties, conditioned to try such appeal, and to abide the order of, and to pay such costs as shall be awarded by such quarter sessions; and the justices shall then determine the appeal in a summary way, and award costs to the parties appealing or appealed against, as they think proper, and the determination of such justices shall be conclusive. *s.* 7.

And all officers belonging to the parish wherein the mother shall have been last settled, and all magistrates of the county,

&c. wherein such parish shall be situated, shall have power to apprehend the reputed father of such bastard child, to take security for the indemnity of the parish, and to punish the parents, and to do every other matter as such magistrates or officers might, in case such child had been born in such parish. *s.* 8.

Penalties on persons not complying with the directions of this act.

And every such owner, keeper, governor, master, secretary, clerk, or other person as aforesaid, who shall neglect, or refuse to comply with the directions of this act shall forfeit 50*l.* and every overseer or churchwarden who shall in like manner neglect or refuse to comply with the directions of this act, shall forfeit 10*l.* to be recovered with full costs, by action of debt, bill, plaint, or information, commenced within six calendar months in any court of record at *Westminster*, one moiety to the poor of the parish where the offence shall be committed, and the other moiety to the person who shall sue. *s.* 16.

*Madder.* *See* TRESPASS.

*Madhouses.* *See* IDEOTS and LUNATICS.

*Maim.* *See* FELONY (*without Clergy*).

*Mainprize.* *See* BAIL.

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# MAINTENANCE.

MAINTENANCE is commonly taken in an ill sense, and in general seemeth to signify an unlawful taking in hand, or upholding of quarrels or sides, to the disturbance or hindrance of common right, and it is said to be twofold. 1 *Hawk.* c. 83. *s.* 1.

1. *Ruralis*, or in the country; as where one assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtilty; or where one stirs up quarrels and suits in the country, in relation to matters wherein he is no way concerned; for this kind of maintenance is punishable at the king's suit by fine and imprisonment, whether the matter in dispute any way depended in plea or not; but it is said not to be actionable. 1 *Hawk. c.* 83. *s.* 1.

2. *Curialis*, or in a court of justice where one officiously intermeddles in a suit depending in any such court, which no ways belongs to him, by assisting either party with money,

or otherwise, in the prosecution or defence of any such suit. 2 *Inst.* 212. 2 *Rol. Abr.* 115. 1 *Hawk. c.* 83. *s.* 3.

Of this second kind of maintenance there seem to be three species: *First*, where one maintains another, without any contract to have part of the thing in suit, which generally goes under the common name of MAINTENANCE; *secondly*, where one maintains one side to have part of the thing in suit, which is called CHAMPERTY (from *campi partitio*, that is *a division of the land*); *thirdly*, where one laboureth a jury, which is called EMBRACERY. 1 *Hawk. c.* 83. *s.* 3.

For the better understanding of this subject, it is therefore proper to consider each of these species of maintenance distinctly, viz.

I. *Maintenance.*

II. *Champerty.*

III. *Embracery.*

## I. *Maintenance.*

What shall be deemed an act of maintenance.

It is said that not only he who assists another with money in his cause as by retaining counsel for him, or otherwise bearing him out in the whole or part of the expence, but also he who by his friendship, or interest saves him that expence, which otherwise he may be put to, is guilty of maintenance; as where one persuades, or but endeavours to persuade, a man to be of counsel for another *gratis*. 1 *Hawk. c.* 83. *s.* 4, 5.

Also it seems to be an act of maintenance to open evidence to the jury, or to give evidence officiously without being called upon to do it, or to speak in a cause as one of counsel with the party, or to retain an attorney for him. 1 *Hawk. c.* 83. *s.* 6.

But it seems clear that a man may lawfully go with his neighbour to enquire for a person learned in law, but that he ought not to give him any money towards carrying on his suit. 1 *Hawk. c.* 83. *s.* 25.

And it seems to be maintenance for a man of great power and interest to say publicly, that he will spend 20*l.* on one side, or that he will give 20*l.* to labour the jury; and it hath been said to be maintenance for such a person to come to the bar with one of the parties, and stand by him while his cause is tried without saying any thing: but promise to maintain another is not maintenance, unless it be in respect of the public manner in which it is made, or the power of the person by whom it is made. 1 *Hawk. c.* 83. *s.* 7.

Also it is said to be as much maintenance for a juror, as for any other person, to solicit a judge to give judgment according to the verdict; but it seems to be no maintenance for a juror to exhort his companions to join with him in giving such a verdict as is right. 1 *Hawk. c.* 83. *s.* 8.

However it seems to be no maintenance for a man to give another friendly advice what action is proper for him to bring for such a debt, or what method is safest to free him from such an arrest; or what counsellor or attorney is likely to do his business most effectually; for it would be extremely hard to make such neighbourly acts of kindness, which seem rather commendable than blame worthy, to come under the notion of maintenance, which always seems to imply a contentious and over-busy intermeddling with other men's matters, in which respect it is so highly criminal. Yet it is said that a man of great power, not learned in the law, may be guilty of maintenance by telling another, who asks his advice, that he hath a good title. 1 *Hawk. c.* 83. *s.* 9.

Also it is said to be no maintenance to give a man money, who has no suit then depending, unless it plainly appear that it was given with a design to assist him in a suit intended, which suit is afterwards actually brought. 1 *Hawk. c.* 83. *s.* 10.

But it is certain that it is as much an act of maintenance to support a man after judgment given, as to do it pending the plea, because the party grieved may be discouraged thereby from bringing a writ of error or the like. 1 *Hawk. c.* 83. *s.* 11.

How far maintenance is justifiable in respect of interest.

It seems clear, that not only those who have an actual interest in the thing in variance, as those who have a reversion expectant on an estate tail, or on a lease for life or years, but also those who have a bare contingent interest in the lands in question which possibly may never vest, and even those who, by the act of God, have the immediate possibility of such an interest, as heirs apparent, or the husband of such heirs, though it be in the power of others to bar them, may lawfully maintain another in an action concerning such lands: and if a plaintiff in an action of trespass alien the lands, the alienee may produce evidence to prove that the inheritance, at the time of the action, was in the plaintiff, because the title is now become his own. 1 *Hawk. c.* 83. *s.* 12, 13, 14, 15.

Also he who is bound to warrant lands may lawfully maintain the tenant in the defence of his title, because he is bound to render other lands, to the value of those that shall be evicted. 1 *Hawk. c.* 83. *s.* 16.

Also he who has only an equitable interest in lands or goods, or even in a chose in action, may lawfully maintain another in an action relating thereto. 1 *Hawk. c.* 83. *s.* 17.

And it seemeth to be agreed, that wherever any person claims a common interest in the same thing, as in a way churchyard, common, or the like, by the same title, they may maintain one another in a suit relating to the same. 1 *Hawk. c.* 83. *s.* 18.

And it is said, that he who is bail for another may take care to have his appearance recorded, but that he ought not to intermeddle any farther. 1 *Hawk. c.* 83. *s.* 19.

In respect of kindred and affinity.

Whoever is of kin or affinity to either of the parties, or but related to him by being his godfather, may lawfuly stand by at the bar, and counsel and assist him, and pray another to be of counsel for him; but he cannot lawfully lay out his money in the cause, unless it be either father, or son, or heir apparent to the party, or the husband of such an heiress. 1 *Hawk. c.* 83. *s.* 20.

In respect of the relationship as lord and tenant.

Not only the actual lord, but also the *cestui que use* of a seignory, may come with the tenant to a trial in an assise against him, and stand by him and assist him, and also pray the sheriff to return an indifferent jury; and it seems a plausible opinion that he may also justify laying out his money in defence of his tenant's title: also the lord of a town may maintain the inhabitants in an action, wherein the right to their common burying place is questioned, by shewing authentic evidence of it to the jury. 1 *Hawk. c.* 83. *s.* 21.

But as to the point, how far a tenant may maintain his lord, it is said, that he may justify coming with his lord and standing with him at the trial, but the books contain nothing more relating to this matter. 1 *Hawk. c.* 83. *s.* 22.

Master and servant.

It is said that a master may go along with his servant, or with his domestic chaplain to retain counsel; and that he may pray one to be of counsel for him, and may go with him, and stand with him, and aid him at the trial, but ought not to speak in court in favour of his cause: also if the servant be arrested, the master may assist him with money to keep him from prison, that he may have the benefit of his service; but it is said that the master cannot safely lay out money for the servant in a real action, unless he have some of his wages in his hands; but those, with the servant's consent, he may safely disburse. 1 *Hawk. c.* 83. *s.* 23.

And a person retained generally as a servant, and not for a particular occasion only, may lawfully ride about to speed his master's business, and may go to counsel for him, and shew his evidence to the counsel, or to the jury, and stand by him at the trial, but cannot lawfully lay out his own money in the suit. 1 *Hawk. c.* 83. *s.* 24.

As an act of charity.

Any one may lawfully give money to a poor man to enable

him to carry on his suit; also any one may lawfully go with a foreigner, who cannot speak English, to a counsellor, and inform him of his case. 1 *Hawk. c.* 83. *s.* 26.

How far maintenance is justifiable by the profession of the law.

A counseller, having received his fee, may lawfully set forth his client's cause to the best advantage, but can no more justify giving him money to maintain his suit, or threaten a juror, than any other person. 2 *Inst.* 564.

Also an attorney specially retained, may lawfully prosecute or defend an action in the court wherein he is an allowed attorney and lay out his own money in the suit, and maintain an action against his client, for the money so laid out, by virtue of the retainer, without any special promise; also an attorney so retained may in like manner maintain his client in a court wherein he is not an allowed attorney; but, as some say, cannot have an action for the money laid out in the suit without a special promise: but an attorney who maintains another is no way justified, by a general retainer, to prosecute for him in all causes; neither can an attorney lawfully carry on a cause for another at his own expense, with a promise never to expect a repayment; and it is questionable whether solicitors, who are no attornies, can in any case lawfully lay out their own money in another's suit. 1 *Hawk. c.* 83. *s.* 28.

But counsellors and attornies, using deceitful practice in maintenance of their clients' causes, are punishable by the common law as well as by the statute of *Westm.* 1. 3 *Ed.* 1. *c.* 28. which enacts, "that if any serjeant pleader or other do any "manner of deceit or collusion in the king's court, or consent "unto it, in deceit of the court, or to beguile the court or "the party, and thereof be attainted, he shall be imprisoned "for a year and a day, and from thenceforth shall not be heard "to plead in that court for any man; and if he be no pleader, "he shall be imprisoned in like manner by the space of a year "and a day at the least; and if the trespass require greater "punishment, it shall be at the king's pleasure*."

In the construction of which statute it hath been holden:

1. That counsellors and others who are not sworn are as much within the meaning of it as serjeants, and the like who are sworn. 1 *Hawk. c.* 83. *s.* 30.

2. That all fraud and falsehood, tending to impose upon or abuse the justice of the king's courts, are within the purview of it, as in the following instances. 1 *Hawk. c.* 83. *s.* 31.

First; where an attorney sues out an *habere facias seisinam*, falsely reciting a recovery in a real action, where in truth

* This pleasure does not signify the extra-judicial will of the sovereign, but such as is declared by the representatives, the judges in his courts of justice. 4 *Black. Com.* 121.

there was no recovery at all, and by colour thereof puts the supposed tenant in the action out of his freehold. 1 *Hawk.* c. 83. s. 32.

Secondly; where one brings a *præcipe* against a poor man, knowing that he had nothing in the land, on purpose to get the possession from the true tenant. 1 *Hawk.* c. 83. s. 33.

Thirdly; where one procures an attorney to appear for a man, and confess judgment without any warrant. 1 *Hawk.* c. 83. s. 34.

Fourthly; where one pleads a false plea known to be utterly groundless, and invented merely with a design to delay justice, and abuse the court. 1 *Hawk.* c. 83. s. 35.

How offences of this nature are punishable at COMMON LAW.

It seemeth that all maintenance is strictly prohibited by the common law, as having a manifest tendency to oppression, by encouraging and assisting persons to persist in suits, which perhaps they would not venture to go on in upon their own bottoms. 1 *Hawk.* c. 83. s. 36.

And therefore it is said, that all offenders of this kind are not only liable to an action of maintenance at the suit of the party grieved, wherein they shall render such damages as shall be answerable to the injury done to the plaintiff; but also that they may be indicted as offenders against public justice, and adjudged thereupon to such fine and imprisonment as will be agreeable to the circumstances of the offence. 1 *Hawk.* c. 83. s. 36.

Also it seemeth, that a court of record may commit a man for an act of maintenance done in the face of the court. 1 *Hawk.* c. 83. s. 36.

How by the STATUTES.

And by 1 *Ed.* 3. *st.* 2. *c.* 14, no person shall take upon him to maintain quarrels, nor parties in the country, to the disturbance of the common law.

Also by 20 *Ed.* 3. c. 4, none shall take in hand quarrels other than their own, nor the same maintain, by them nor by other, for gift, promise, amity, favour, doubt, fear, nor other cause, in disturbance of law, and hinderance of right.

And by 1 *Ric.* 2. c. 4, none shall take any quarrel by maintenance in the country, nor elsewhere, upon a grievous pain, *viz.* the counsellors and the king's great officers, upon a pain which shall be ordained by the king himself, by the advice of the lords; and other officers and servants of the king, as well in the *Exchequer* and all his other courts as of his own meiny, upon pain to lose their offices, and to be imprisoned and ransomed at the king's will; and all other persons, upon pain of imprisonment, and to be ransomed.

In the construction of these statutes it has been holden, that maintenance of a suit in a court baron is as much within the purview thereof as a maintenance in a court of record. 1 *Hawk.* c. 83. s. 39.

That it is not material whether the plaintiff in an action on the said statutes were non-suited or recovered in the action wherein the maintenance is supposed. 1 *Hawk.* c. 83. s. 41.

Also that he who fears that another will maintain his adversary, may by way of prevention have an original writ grounded on the said statutes prohibiting them so to do. 1 *Hawk.* c. 83. s. 42.

And it is further enacted by 32 *Hen.* 8. c. 9, that no person whatsoever shall unlawfully maintain or procure any *unlawful* maintenance, in any action, demand, or complaint, in any court having power to hold plea of lands; nor shall *unlawfully* retain any person for maintenance of any plea, to the disturbance or hinderance of justice, on pain of 10*l.* half to the king, and half to him that shall sue within one year.

It seemeth that in an information on this statute, it is not sufficient to say, that the defendant maintained the party, without adding that he did it *unlawfully.* *Savil*, 41, 42. 1 *Hawk.* c. 83. s. 45.

And it is also necessary to show that a plea was depending, and therefore that it is not sufficient to say that a bill was exhibited. 1 *Hawk.* c. 83. s. 46.

And it hath been adjudged, that maintenance of a suit in a spiritual court is neither within this nor any of the other statutes concerning maintenance. *Noy*, 68. *Cro. Eliz.* 594.

## *II. Champerty.*

Champerty is an offence at the common law, and as such punishable in like manner as hath been before expressed in regard to maintenance. 2 *Inst.* 208. How punishable at common law.

It is also particularly restrained by statute: How by statute.

*For by* 3 Ed. 1. c. 25, *no officer of the king, by himself nor by other, shall maintain pleas, suits, or other matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof, by* covenant *made between them, and he that doth shall be punished at the king's pleasure.*

In the construction of this statute it hath been holden:

1. That by the king's courts therein mentioned are intended only his courts of record. 2 *Inst.* 208.

2. That maintenance in personal actions to have part of the debt or damages, is as much within the statute, as maintenance in real actions for a part of the land. 1 *Hawk.* c. 84. s. 6.

3. That maintenance in consideration of a rent granted out of land in variance, is within this statute, but that rent granted out of other lands is no way within the purview of it. 1 *Hawk.* c. 84. s. 7.

4. That under the word covenant, which in a strict sense

signifieth only an agreement by deed, all kinds of promises and contracts of this kind are included, whether they be made by writing or parol. 2 *Inst.* 209, 563.

5. That it is not material whether he who brings a writ of champerty did in truth suffer any damage by it; or whether the plea wherein it is alleged be determined or not. 1 *Hawk.* c. 84. *s.* 8.

6. That the maintenance of a defendant is as much within the meaning of the statute as the maintenance of a plaintiff. 1 *Hawk. c.* 84. *s.* 9.

But that such grants only, of part of the thing in suit, which are made merely in consideration of the maintenance, are within the meaning of the statute; and not such as are made in consideration of a precedent honest debt, which is agreed to be satisfied with the thing in demand when recovered. 1 *Hawk.* c. 84. *s.* 10.

*Also by* 28 Edw. 1. c. 11, *no officer nor other, to have part of the thing in plea, shall take upon him business in suit; nor none upon any such covenant shall give up his right to another. And if any do, and he be attainted thereof, the taker shall forfeit unto the king so much of his lands and goods as doth amount to the value of the part he hath purchased. And whosoever will shall be received to sue for the king before the justices before whom the plea hangeth. But hereby no person shall be prohibited to have counsel of pleaders, or of men learned in the law, for fee, or of his parents or next friends.*

And it is enacted by 31 *Eliz.* c. 5, *that the offence of champerty may be laid in any county at the pleasure of the informer.* s. 4.

Also by 33 *Ed.* 1. *st.* 3, *any person who shall take for maintenance, or the like bargain, any suit or plea against another; he and also they who consent thereto, shall be imprisoned three years, and make fine at the king's pleasure.*

In construction of the stat. 28 *Ed.* 1. c. 11, it hath been holden,

That champerty in any action at common law, whether it be real, personal, or mixt, is within such statute. 1 *Hawk.* c. 84. *s.* 16.

Also that the purchase of land, while a suit in equity concerning it is depending, is within the purview of it. 1 *Hawk.* c. 84. *s.* 16.

That a lease for life, or years, or a voluntary gift of land, hanging a plea, is as much within the statute as a purchase for money. 1 *Hawk.* c. 84. *s.* 17.

But that the giving of part of the land in suit, *after the end of it*, to a counsellor for his wages, is not within the meaning of it, if it evidently appears, that there was no kind of precedent bargain relating to such gift; but it seems, sayeth my lord *Coke*, dangerous to meddle with any such gift, since it cannot

but carry with it a strong presumption of champerty. 1 *Hawk.* c. 84. s. 20. 2 *Inst.* 564.

### *III. Embracery.*

It seems, that any attempt whatsoever, either by the party himself, or his counsel or attorney, or any person whatsoever, to corrupt or influence, or instruct a jury, or any way to incline them to be more favourable to the one side than to the other, by money, promises, letters, threats, or persuasions, except only by the strength of the evidence, and the arguments of the counsel in open court, at the trial of the cause, is a proper act of embracery, whether the jurors on whom such attempt is made, give any verdict or not, or whether the verdict given be true or false. 1 *Hawk.* c. 85. s. 1. 5.

But it seemeth that any person who may justify any other act of maintenance, may safely labour a juror to appear and give a verdict, according to his conscience, but that no other person can justify intermeddling so far, and that no one whatsoever can justify the labouring a juror not to appear. 1 *Hawk.* c. 85. s. 6.

And the law, so far abhors all corruption of this kind, that it prohibits every thing which has the least tendency to it, what specious pretence soever it may be covered with; and therefore it will not suffer a mere stranger so much as to labour a juror to appear and act according to his conscience. 1 *Hawk.* c. 85. s. 2.

Also it is said to be an offence savouring of the nature of embracery, to give money to a juror after the verdict, unless it be openly and fairly given to all alike, in consideration of the expenses of their journey, and trouble of their attendance. 1 *Hawk.* c. 85. s. 3.

So the bare giving of money to another, to be distributed among jurors, savours of embracery whether any of it be distributed or not; and it is an offence of the like kind for a person, by indirect means, to procure himself, or another, to be sworn of a tales, in order to serve one side; also it is as criminal in a juror as in any other person to endeavour to prevail on his companions to give a verdict on one side, by any other arguments besides the evidence produced, and the general obligations of conscience. 1 *Hawk.* c. 85. s. 4.

As to the point how far offences of this kind are restrained by the common law, there can be no doubt but that they subject the offender either to an indictment or action, in the same manner as all other kinds of unlawful maintenance do by the common law. 1 *Hawk.* c. 85. s. 7. How punished at common law.

And if an act of embracery were not known before the trial of a cause, so that the party to whose prejudice it was intended, had no opportunity to prevent the ill effects of it, by challenging

the juror who was practised upon, it will be a good ground to move the court to set aside the verdict. 1 *Hawk.* c. 85. s. 7.

By statute. This offence is also restrained by statute, for by 5 *Ed.* 3. c. 10, *if any juror take of the one party or the other, and be therefore attainted, he shall not thereafter be put on any inquests, and nevertheless shall be commanded to prison and further ransomed at the king's will.*

And by 38 *Ed.* 3. *c.* 12, *if any jurors between the king and party, or party and party, do take any thing by them or other of the party, plaintiff or defendant, to give their verdict, and thereof be attainted, be it at the suit of the party that will sue for himself, or for the king, or any other person, every of the said jurors shall pay* ten times as much as he hath taken; *and he that will sue shall have the one half, and the king the other half. And all the* embraceors *to bring or procure such inquest to take gain or profit, shall be punished in the same manner as the jurors. And* if the juror or embraceors *have not whereof to make gree as aforesaid, he shall have the imprisonment of one year.*

Also by 32 *Hen.* 8. c 9, *no person shall embrace any jurors on pain of* 10l. *half to the king and half to him that shall sue within a year*, s. 3. 6.

### Indictment for Maintenance.

Monmouthshire. } *The jurors for our lord the king, upon their oath present that O O, late of ——— in the said county of——— gent. on the ——— day of ——— in the ——— year of the reign of ——— at ——— aforesaid in the county aforesaid, unjustly and unlawfully maintained and upheld a certain suit, which was then depending in the court of our sovereign lord the king, before the king himself, between P P plaintiff and D D defendant, of a plea of debt on the part of the said P P against the said D D, against the form of the statute in such case made and provided, and to the manifest delay and disturbance of justice, and in contempt of our said sovereign lord the king, and to the great damage of the said P P, and against the peace of our said sovereign lord the king, his crown and dignity.*

*Malt.* *See* Excise.

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## MANDAMUS.

A Mandamus is a mandatory writ issuing in the king's name out of the court of *King's Bench*, directed to any person,

corporation, or inferior court of judicature, requiring them to do some particular thing, therein specified, which appertains to their office and duty, and which the court of *King's Bench* has previously determined, or at least supposes to be consonant to right and justice. 3 *Black. Com.* 110.

It is a high prerogative writ, introduced to prevent a failure of justice, and is of a most extensive remedial nature. 3 *Burrows' Rep.* 1265. *Cas. B. R. temp. Ld. Hard.* 99. 3 *Black. Com.* 110.

And it may be issued in some cases, where the party has also another more tedious method of redress, as in the case of admission or restitution to an office: but it issues in all cases where the party hath a right to have any thing done, and hath no other specific means of compelling its performance. 3 *Black. Com.* 110.

A mandamus therefore lies to compel the admission or restoration of the party applying, to any office or franchise of a public nature, whether spiritual or temporal; to academical degrees; to the use of a meeting house, &c.; it lies for the production, inspection, or delivery of public books and papers; for the surrender of the *regalia* of a corporation; to oblige bodies corporate to affix their common seal; to compel the holding of a court; to oblige inferior courts and magistrates *to do that justice, which without such writ they are in duty and by virtue of their offices obliged to do**; and for an infinite number of purposes, which it is impossible to recite minutely. 3 *Black. Com.* 110. 4 *Mod. Rep.* 52. *Carthew*, 217.

But the court of *King's Bench* will not grant a mandamus to a ministerial officer, such as the county treasurer, to obey an order of the court of quarter sessions; for the proper remedy in case of his refusal to obey such order is by indictment, in like manner as against a constable, or other inferior officer, *Rex* v. *Bristow*, *Hil. Ter.* 35 *Geo.* 3. 6 *Ter. Rep.* 168.

This writ is grounded on a suggestion by the oath of the party injured of his own right, and of the denial of justice, by the court, or person complained of: whereupon, in order more fully to satisfy the court that there is a probable ground for such interposition, a rule is made (except in some general cases, where the probable ground is manifest), directing the party complained of to show cause why a writ of mandamus should

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* For it is the peculiar business of the court of *King's Bench* to superintend all inferior tribunals, and therein to enforce the due exercise of those judicial or ministerial powers, with which the crown or legislature have invested them: and this not only by restraining their excesses but also by quickening their negligence, and obviating their denial of justice. 3 *Black. Com.* 110, 111.

not issue; and if he shows no sufficient cause, the writ itself is issued, at first in the alternative, either to do this, or signify some reason to the contrary, to which a return or answer must be made at a certain day. 3 *Black. Com.* 111.

And if the inferior judge, or other person to whom the writ is directed, returns or signifies an insufficient reason, then there issues in the second place a peremptory mandamus to do the thing absolutely; to which no other return will be admitted, but a certificate of perfect obedience and due execution of the writ. 3 *Black. Com.* 111.

If the inferior judge or other person makes no return, or fails in his respect and obedience, he is punishable for his contempt by attachment. 3 *Black. Com.* 111.

But if he, at the first, return a sufficient cause, although it should be false in fact, the court of *King's Bench* will not try the truth of the fact upon affidavits; but will for the present believe him, and proceed no farther on the mandamus. But then the party injured, may have an action against him for his false return, and (if found to be false by the jury) shall recover damages equivalent to the injury sustained, together with a *peremptory mandamus* to the defendant to do his duty. 3 *Black. Com.* 111.

*Manslaughter.* *See* HOMICIDE.

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# MANUFACTURES.

UNDER this title it is proposed to treat of the laws which have been made for the support, regulation, and encouragement of the manufactures of this kingdom, so far as justices of the peace are concerned in the execution of those laws; and that in the following order:

I. *Buttons.*

II. *Concerning the raising and dressing of hemp and flax.*

III. *Concerning the manufacture of hats.*

*IV. Concerning the manufacture of leather.*

*V. Linen cloth.*

*VI. Pewter and brass.*

*VII. Sail cloth.*

*VIII. Silk.*

*IX. Stockings and frame-work knitted pieces.*

*X. Thread.*

*XI. Woollen manufactures.*

*XII. Cotton and woollen mills.*

The regulations concerning the manufacture of CABLES AND CORDAGE are inserted under that title.

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## *I. Buttons.*

By 36 *Geo.* 3. *c.* 60, no person who shall order any metal buttons of any manufacturer shall order the words gilt or plated, or any other word, letter, figure, mark, or device, indicating the quality, to be marked upon any part of such buttons, or order any word, letter, figure, mark, or device, whether the same do or do not indicate the quality, to be marked upon the underside of such buttons, unless such person do at the same time order such button to be gilt with gold, or plated with silver, and no person shall procure or purchase any metal buttons, not being gilt with gold or plated with silver, having the words gilt, or plated, or any other word, letter, figure, mark, or device, indicating the quality, marked thereon, or having any word, letter, figure, mark, or device, whether the same do or do not indicate the quality, marked on the underside thereof, knowing the same not to be gilt with gold, or plated with silver, on pain of forfeiting, in every of the cases aforesaid, such buttons, together with 5*l.* for any quantity not exceeding twelve dozen, and for any quantity exceeding twelve dozen, the rate of 1*l.* for every twelve dozen. *s.* 1. Penalty on putting false marks on gilt buttons.

And no person shall mark upon any part of any metal but- No marks to be used but such

as truly express the real quality of the buttons.

ton, the words "gilt" or "plated," or any other device, indicating the quality, or any device on the underside thereof, whether the same do or do not indicate the quality, unless the same be really plated with silver before the same shall be so marked, or afterwards gilt with gold, or destroyed before sold; and no person shall put upon any metal button, having the words gilt or plated, or any other device indicating the quality, on any part of such button, or any device on the underside thereof, whether the same do or do not indicate the quality, any ornament whatsoever, unless those parts of such buttons which shall not be covered by such ornament be really plated with silver or gilt with gold before such ornament shall be put thereon: and no person or persons shall put, place, or pack for sale, upon any card, paper, or other substance, or sell, or offer to sale any metal buttons not being gilt with gold or plated with silver, if the words gilt or plated, or any other device indicating the quality, be marked upon any part of such buttons, or upon such card (not being the pattern card,) papers, or other substance, or if any device be marked on the underside of such buttons, whether the same do or do not indicate the quality, knowing the same not to be gilt with gold or plated with silver, upon pain of forfeiting such buttons, together with 5*l.* for any quantity exceeding one dozen, and not exceeding twelve dozen, after the rate of 1*l.* for every twelve dozen. *s.* 2.

To restrain persons from marking any other than the words "gilt" or "plated" upon metal buttons.

And no person shall mark upon any part of any metal button any device indicating the quality thereof, except the words "gilt" or "plated"; and no person shall put, place, or pack for sale upon any card, (except the pattern card), paper or other substance, or parcel, or offer to sale any metal buttons having any device, indicating the quality, other than the words, "gilt" or "plated," upon pain of forfeiting such buttons, together with 5*l.* for any quantity exceeding one dozen, and not exceeding twelve dozen, and for any quantity exceeding twelve dozen, after the rate of 1*l.* for every twelve dozen. *s.* 3.

Where persons may mark the words "double gilt," and "treble gilt," upon metal buttons.

But nothing in this act shall extend to any person on account of the words "double gilt," being marked upon any metal buttons; provided continually, from the time of gilding thereof gold shall remain put, placed, and equally spread upon the upper surface of the buttons, exclusive of the edges, in the proportion of ten grains to such quantity of the said buttons, the upper surfaces of which, exclusive of the edges, shall measure or be equal to the superficies of a circle twelve inches in diameter: or for the words "treble gilt," being marked; provided continually, from the time of gilding thereof, gold shall remain put, placed, and equally spread upon the upper surface of the said buttons, exclusive of the edges, in the proportion of

fifteen grains to such quantity of the said buttons, the upper surfaces of which, exclusive of the edges, shall measure or be equal to the superficies of a circle twelve inches in diameter. *s.* 4.

Penalty on making false invoices.

And if any person shall make out for any metal buttons, any list, bill of parcels, or invoice, expressing therein any other than the real quality of such buttons, and shall at the time of making the same out express therein any other than the real quality of such buttons, such persons shall forfeit 20*l*. *s.* 5.

Penalty of mixing buttons of different qualities.

And no person shall knowingly put, place, or intermix, any metal buttons that shall not be really gilt with gold or plated with silver, upon any card, (except pattern cards), or upon any paper, or other substance whereon any metal buttons gilt with gold or plated with silver shall be put, nor intermix the same in anyother manner, upon pain of forfeiting the buttons, together with the sum of 5*l*. for any quantity exceeding one, and not exceeding twelve dozen; and for any quantity exceeding twelve dozen, after the rate of 1*l*. for every twelve dozen. *s.* 6.

For ascertaining what shall be deemed to be a gilt button.

And for ascertaining what shall be deemed a gilt or plated button, it is enacted, that no metal buttons shall be deemed gilt, unless continually, from the time of gilding thereof, gold shall remain put, placed and equally spread upon the upper surface of the said buttons, exclusive of the edges, in the proportion of five grains to such quantity of the said buttons, the upper surfaces of which, exclusive of the edges, shall measure or be equal to the area or superficies of a circle twelve inches in diameter; and no metal buttons shall be deemed plated buttons unless the area or superficies of the upper surface thereof be made of a plate of silver, put, placed, or fixed upon copper, or a mixture of copper with other metals, previous to such plate of silver and copper, or mixture of copper with other metals, being rolled into sheets or fillets. *s.* 7.

Recovery of penalties.

It shall be lawful for two justices of the peace of the county, city, or place where the offender shall reside, or where the offence shall be committed, to hear and determine any offence against this act; and such justices are, upon information or complaint, (within three calendar months after the commission of the offence, *s.* 15.) to summon the party accused, and the witnesses on each side, and shall examine into the matter of fact, and upon due proof thereof, either by confession or the oath of one witness, to give judgment for the penalty, with costs to be allowed by such justices. *s.* 8.

And the said justices may draw up the conviction in the form or to the effect following: *viz.*

Form of conviction.

BE *it remembered, that on the* ——— *day of* ——— *in the year of our Lord* ——— *at* ——— *in the county of* ———

—— A. B. *came before us*, C, D, *and* E, F, *two of his majesty's justices of the peace for the said county*, (*city*, or *place*, as the case may be) *and informed us, that* G H, *of* —— *on the* —— *day of* —— *now last past, at* —— *in the said county*, (*city*, or *place*, as the case may be) here set forth the fact for which the information is laid) : *whereupon the said* G H, *after being duly summoned to answer the said charge, appeared before us on the* —— *day of* —— *at* —— *in the said county*, (*city*, or *place*), *and having heard the charge contained in the said information, declared he was not guilty of the said offence* (or as the case may happen to be), *did not appear before us pursuant to the said summons*; (or, *did neglect and refuse to make any defence against the said charge*), *but the same being fully proved before us upon the oath of* J K, *a credible witness*, (or, as the case may happen to be) *acknowledged and voluntarily confessed the same to be true; and it manifestly appeared to us that the said* G H *is guilty of the offence charged upon him in the said information; we do therefore hereby convict him of the offence aforesaid, and do declare and adjudge that he the said* G. H. *hath forfeited the said buttons, together with the sum of* —— *of lawful money of* Great Britain, *for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given under our hands and seals, the* —— *day of* ——

Levying penalty.

And the said justices are to issue out their warrant for the levying such penalty and costs on the goods of the offender, and to cause sale to be made thereof, in case they shall not be redeemed within five days, inclusive of the day of the seizure, rendering the surplus, if any, to the person distrained; and for want of a sufficient distress, such justices shall commit such offender to gaol for not exceeding three calendar months, unless payment shall be sooner made of the said penalty and costs. *s.* 8.

Appeal.

But persons aggrieved may (upon giving security, with a sufficient surety, to the amount of the penalties and costs, together with such further costs as shall be awarded in case such judgment shall be affirmed) appeal to the next general quarter sessions; and the justices at such sessions are to summon and examine witnesses on oath, and to hear and finally determine the matter; and to award such costs as they think reasonable, to the party in whose favour such appeal shall be determined. *s.* 9.

Proceedings not to be quashed for want of form only.

And no conviction shall be set aside in any court whatsoever, for want of form, or through the mistake of any fact, circumstance, or other matter whatsoever, provided the material facts alleged in such conviction, and upon which the same shall

be grounded, be proved to the satisfaction of the said court *s.* 11.

And it shall be lawful for the said justices, and also the said quarter sessions, to mitigate the said penalties, in such manner as to them shall seem expedient, provided that such penalties shall in no case be reduced below one half, or, where such penalties shall be less than the sum of 40*l.* below 20*l.* *s.* 10. Mitigation of penalties.

And if any person shall be summoned as a witness, and shall not appear without a reasonable excuse, or appearing shall refuse to be examined before such justices, such person shall forfeit 5*l.* to be levied as other penalties. *s.* 13. Witnesses not attending.

Also it shall be lawful to recover any of the said penalties by action or suit in any of the courts at *Westminster*, with costs. But the action must be brought within three calendar months. *s.* 14, 15. Penalties may be recovered by action.

And it shall be lawful for any justice, by warrant, to cause any such metal buttons as shall be liable to be forfeited by virtue of this act, to be seized, and the same, when seized, to keep in safe custody, for the purpose of producing the same in evidence upon any prosecution or action to be instituted for the penalties incurred, and when, and as soon as the further production thereof in evidence shall become unnecessary, then the same shall, by order of such justices, be defaced and destroyed. *s.* 14. One justice may issue a warrant to seize buttons.

One moiety of the penalties shall be paid to the poor of the parish, township, or place, where the offence shall be committed, and the other moiety to the informer. *s.* 16. Application of the penalties.

And any inhabitant of the place in which any offence shall be committed, shall be admitted to give evidence. *s.* 17. Parishioners may be witnesses.

If any person liable to any of the penalties aforesaid, by reason of any thing done by him under the order of any other person, shall, before any information or complaint shall be laid against him, discover to two justices the name of the person by whose order he shall have done such act, so that such person shall be prosecuted to conviction, then such person shall not be liable to the penalties aforesaid, but shall be entitled to a moiety of the penalty as other informers. *s.* 18. Persons disclosing by whose order any thing punishable under this act was done, shall not be liable to any penalty for doing it.

Also if any manufacturer who shall have ordered any metal buttons to be gilt with gold by any gilder or other person, shall, before the burnishing of the said buttons, appear before two justices, and prove before the said justices, by one witness, that he ordered the said buttons to be gilt in the manner required by this act, and delivered a quantity of gold sufficient for that purpose, or paid or contracted to pay a proper sum of money in that behalf, and shall afterwards prosecute such gilder or person to conviction, then the said manufacturer shall not be liable to any of the penalties inflicted on account of the said buttons not being gilt with gold. *s.* 19. Manufacturers not to be liable to penalties in certain cases,

Nothing in this act shall extend to any button made of gold, What buttons

the act shall not extend to.

silver, tin, pewter, lead, or mixtures of tin and lead, or iron tinned, or of the mixt metals called Bath metal or white metal, or of either or any of these metals inlaid with steel, or buttons plated upon shells. *s.* 20.

For the protection of the button trade, no buttons made of cloth or wood only to be used.

By 10 *Will.* 3. c. 2, no persons in *England*, *Wales*, or *Berwick*, shall make, sell or set on any clothes, any buttons made of cloth, serge, drugget, frieze, camlet, or any other stuffs of which clothes are usually made, or any buttons made of wood only, and turned in imitation of other buttons; on forfeiture of 40*s.* for every dozen of buttons so made, sold or set on, and in like proportion for a lesser quantity; one moiety to the king, the other to him that shall sue in any court of record.

*Made of wood only.*] Upon the trial of an information for making wooden buttons contrary to this act, there was a special verdict, which found that all the buttons were of wood, *but there was in each a shank of wire:* and the court, after argument gave judgment for the king, viz. that this was a button of wood, notwithstanding the shank; which is no essential part of a button, for buttons of silk and hair have no shanks. 1 *Ld. Raym.* 712. 2 *Lord Raym.* 1275.

And either making, selling or setting on such buttons are offences within this statute. 2 *Ld. Raym.* 1277.

And by 8 *Ann*, c. 6, no taylor or other person shall make, set on, sell, use, or bind on any clothes, any button or button-holes, made or bound with serge or other stuff of which clothes are usually made, on pain of 5*l.* for every dozen of buttons or button-holes; one moiety to the crown, the other to him who will sue for the same; or two justices may, by warrant, levy the penalty*, and return the overplus to the owner, upon the conviction of the offender by one witness, but the party aggrieved may appeal to the next quarter sessions, and shall have costs.

Also by 4 *Geo.* 1. *c.* 7, no taylor or other person shall make, sell, set on, use or bind on any clothes, buttons, or button-holes, made of or bound with cloth, serges, drugget, frieze, camlet, or any stuffs that clothes are usually made of, on forfeiture of 40*s.* for every dozen of such buttons and button-holes, and so in proportion; and every person being thereof convicted upon oath of one witness, shall forfeit as aforesaid. *s.* 1.

And all wearing garments made with buttons and button-holes of the same cloths, &c. and exposed to sale, shall be forfeited and seized, and applied to the uses in this act. *s.* 8.

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* But it is not added, as usual, by distress and sale of the offender's goods.

And if any taylor, or other person, shall cause his servant to make any clothes contrary to this act he shall be subject to the penalties. *s.* 9.

But nothing herein shall extend to clothes made of velvet. *s.* 2.

Persons inhabiting in any gaol or house of correction, or in any privileged place, offending against this act, and being convicted, shall be subject to the penalties. *s.* 3.

Offences against this act shall be prosecuted within three months. *s.* 4.

And such offences shall be heard and determined by one justice of the county, city, or division, where the same shall be discovered, or where the offender dwells (such justice being not concerned in the matter), upon the oath of one witness: and one moiety of the forfeitures, the charges of conviction deducted, shall be paid to the informer, the other to the poor of the parish where the offence shall be discovered. And if any offender shall refuse to pay the forfeitures for fourteen days after conviction, such justice shall issue his warrant to the constable, to levy the same by distress and sale of goods; and, for want of distress, to commit the offender to the common gaol, there to be kept three calendar months to hard labour. *s.* 5.

But if any person find himself aggrieved by the justice's order, or warrant, he may appeal to the quarter sessions, and costs shall be allowed to the party grieved, to be levied as in other cases of appeals. *s.* 6.

And by 7 *Geo.* 1. *c.* 12, it shall not be lawful for any person to use or wear on any clothes, buttons or button-holes made or bound with cloth, serge, drugget, frieze, camlet, or any stuffs whereof clothes or wearing garments are usually made: and if any person shall use or wear such buttons or button-holes, such person, being convicted in manner hereinafter mentioned, shall forfeit for every dozen of such buttons or button-holes, 40*s.* or in proportion for a lesser quantity. *s.* 1.

But nothing herein shall extend to clothes made of velvet. *s.* 5.

And it shall be lawful for one justice of peace of the county or place where any offence shall be committed against this act, or where such offender shall inhabit, upon oath of one credible person, to summon the party accused, and upon his appearance or contempt, to proceed to the examination of the matter, and on due proof made, either by confession of the party, or such oath, to determine the same, and to convict the offender; and to cause the penalties on the offender refusing to pay the same on demand, by warrant to be levied by distress and sale of goods, rendering the overplus; and one moiety of the for-

feiture shall be to him on whose oath* the person shall be convicted, and the other to the poor of the parish where such offence shall be committed. *s.* 2.

But persons aggrieved by the order or warrant of such justice may appeal to the next quarter sessions, giving eight days notice, which sessions are to hear and determine the same, and their judgment shall be final. *s.* 3.

Offences against this act shall be prosecuted within one month after such offence committed. *s.* 4.

A warrant to levy the forfeiture for setting on cloth buttons contrary to 4 *Geo.* 1. *c.* 7.

Monmouthshire. { To the constable of ———

*Whereas* O O, *of* ——— *in the said county of* ——— *taylor, was on the* ——— *day of* ——— *duly convicted before me* J P, *esq. one of his majesty's justices of the peace in and for the said county, upon the oath of* A W *of* ——— *being a credible witness, for that he the said* O O *lately made, or caused to be made, one cloth coat for the said* A W, *and on such coat did set and use three dozen of buttons made of cloth, serge, drugget, frieze, or camlet,* [as the case is] being a stuff that clothes are usually made of [or, *and on such coat did set, use and bind three dozen of button-holes, made of,* [or] *bound with cloth, &c.*] *contrary to the form of the statute in that case made and provided: whereby he hath forfeited the sum of forty shillings for every dozen of such buttons so set on and used as aforesaid* [*or button holes so made and bound as aforesaid,*] *amounting in the whole to the sum of* 6*l. And whereas the said* O O *on the said* ——— *day of* ——— *had due notice of the said conviction, and the said sum of* 6*l. was then lawfully demanded of him, but he hath neglected* [*or refused*] *to pay, and hath not yet paid the said sum of* 6*l.: I do therefore hereby command you forthwith to levy the said sum of* 6*l. by distraining the goods of him the said* O O; *and if within the space of* [six] *days next after such distress by you taken, the said sum of six pounds*

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* This application of the penalty is rather singular, for giving a moiety in direct words *to the person who shall upon oath convict the offender*, breaks through the established rule of law, that the evidence of persons interested is inadmissible: and there are but few instances in the statute law *of a like application of a penalty.*

There seems also to be another oversight in the framing of the above act, for it does not appear how one moiety of the forfeiture is to be applied where the party is convicted on his own confession; and it might be contended, upon an equitable construction of the clause, that the offender himself is entitled thereto.

*shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale that you do pay the said sum of six pounds, one moiety to* I I, *the person who informed me of the said offence, and prosecuted the said* O O *for the same, and the other moiety to the poor of the said parish of* —— *rendering to him the said* O O *the overplus upon demand; and if no sufficient distress can be found whereon to levy the said sum, that you certify the same to me, together with the return of this warrant.* Given under my hand and seal, &c.

The constable's return of want of distress.

A C, *the within mentioned constable of* —— *maketh oath, that he hath made diligent search for, but doth not know of, nor can find, any goods of the within mentioned* O O, *whereon to levy the sum of* 6*l. as he is within commanded.*

A. C.

*Sworn this* ——
*day of* —— *before me the within mentioned justice*

J. P.

Warrant of commitment thereon.

Monmouthshire. { To the constable of —— and the keeper of the common gaol at —— in the said county.

[Recite the conviction, and neglect to pay the penalty, as in the first precedent, and then say] *And whereas it duly appears to me, that no goods of the said* O O *can be found, whereon the said penalty of* 6*l. can be levied: these are therefore to command you, the said constable, forthwith to apprehend the said* O O, *and to convey him safely to the gaol aforesaid, and there to deliver him to the keeper thereof, together with this warrant: and I do hereby charge and command you the said keeper to receive the said* O O *into your custody, in the said gaol, and there keep him to hard labour for the space of three calendar months.* Given under my hand and seal, &c.

*Note.* There must be a previous information, summons, and conviction, and the general form thereof may be collected from other precedents.

## II. *Hemp and Flax.*

By 33 *Hen.* 8. c. 17, It shall not be lawful to water hemp or flax in any river, stream, or common pond where beasts be used

Hemp and flax not to be watered in running streams.

to be watered, but only on the grounds, or in pits, or in their several ponds, upon pain to forfeit 20*s*. the one half to the king, and the other half to the party aggrieved, or to any of the king's subjects that will sue for the same in any court of record or leet. *s*. 2.

Any person may set up the trade of hemp or flax-dressers.

By 15 *Car*. 2. c. 15, it shall be lawful for any persons in any place, privileged or unprivileged, corporate or not corporate, to set up the trade of breaking, kickling, or dressing of hemp or flax, as also for making and whitening of thread, as also of spinning, weaving, making, whitening or bleaching of cloth made of hemp or flax only; as also the trade of making twine or nets for fishery, or of stoving of cordage; as also the trade of making tapestry hangings. *s*. 2.

And all foreigners that shall set up and use any of the trades aforesaid, three years in *England*, shall, taking the oaths of allegiance and supremacy, before two justices of the peace near their dwellings, enjoy all privileges as natural born subjects. *s*. 3.

## *IV*. Lace.

Lace manufacturers to be paid in money only.

By 19 *Geo*. 3. *c*. 49, all lace merchants and dealers in lace, and all other persons, who shall employ any person in the making of *bone or thread*-lace, or who shall buy any bone or thread-lace of the maker, shall pay such persons for their labour, and for all the lace bought of them, in money only, and not with goods, or by way of truck, or in any other manner whatsoever, either in the whole, or in part, on pain to forfeit 10*l*. to be levied by distress and sale of the goods of the offender, by warrant under the hand and seal of one justice; and such forfeiture shall be paid to the party aggrieved; and for want of sufficient distress such justice shall commit the offender to the common gaol for six calendar months, unless such penalty and the charges attending the recovery thereof, shall be sooner paid. *s*. 1, 2.

And if any money shall be due to any person employed in making lace, for labour, or for the purchase of such lace, such person may apply to any justice; and in case it shall, upon the oath of the party complaining, appear to such justice, that such money is due, such justice shall cause the same to be levied as the said forfeiture. *s*. 3.

But any person aggrieved may appeal to the general quarter sessions within six months, first giving fourteen days previous notice to the person in whose favour the act shall be done, of his intention to appeal; and the quarter sessions are to hear and determine such appeal, and make such order therein, and award costs to either party, and by warrant levy the costs by

distress and sale; and the determination of the said quarter sessions shall be conclusive upon all parties. *s.* 4.

### V. *In manufacturing of hides and skins into leather.*

Justices power to appoint places for importing raw hides before sold to the tanner.

It shall be lawful for the mayor, bailiff, or other head officer of every city, town corporate, borough, or market-town, having such head officer, or any two justices acting for any city, liberty, town corporate, borough, or market town, where there shall be no such head officer; and in cities, liberties, towns corporate, boroughs, and market-towns, where there are not such two magistrates, then for any two justices of the peace acting for any division of any county, within or nearest to which any such city, borough, or town, shall be situate; within three months after the passing of this act, to appoint some convenient place for the examining all the raw hides and skins of all oxen, bulls, cows, heifers, steers or stirks, calves, hogs or pigs, sheep, lambs, horses, mares or geldings, killed within such city, town corporate, borough, or market town, or within such distance thereof as shall be ascertained by the persons choosing such place, so as such distance shall not exceed three miles, nor be less than two, from any such city, borough, or market town; and such persons as aforesaid shall also appoint proper days and hours for the inspection of hides and skins in such places; and shall cause notice thereof, and of the distance to which the jurisdiction of the inspectors appointed by this act shall extend, to be put up in legible characters, and in some conspicuous part of the place so appointed; and the persons appointing such places shall also, at the time of fixing such places, or as soon after as the same can be done, and annually in each year, or oftener if necessary, appoint some persons of competent skill to be inspectors of hides and skins within such city, liberty, borough, or market town, or the districts thereof; and also from time to time to appoint any other inspectors to supply any vacancy that may arise by death, removal, or otherwise. 39 and 40 *Geo.* 3. *c.* 66. *s.* 2.

And it shall be lawful for any mayor or other persons authorized by the said act to appoint any proper place for the examining raw hides and skins, to appoint any place, within any district, fixed under the above act, or this, whether such place shall be within any city, town corporate, borough, or market-town, or not. 41 *Geo.* 3. *sess.* 2. *c.* 83. *s.* 1.

Manner of appointing inspectors.

If any six or more, or in case of any difference of opinion of the majority of the tanners, curriers, or other persons manufacturing of leather, not being journeymen or apprentices, or persons working with or for any master currier, or manufacturer of

leather for hire, and who shall then be residing and carrying on such manufacture within such city, liberty, borough, or market-town, or the district thereof respectively, and who shall have delivered in writing, their names, abode, and occupations, shall recommend, in writing, to the persons authorized by this act to appoint inspectors, two persons proper to be appointed in every place where one shall be necessary, or four persons where two shall be requisite, then one or two of such persons so recommended, and no other, shall be appointed inspector or inspectors; but two or more partners shall be considered as one person only; also when any complaint shall be made by any person interested or dealing in any raw hides or skins, in any such place appointed for the inspection thereof, or of any misconduct or the neglect of duty, in any such inspector, and due proof thereof shall be made to the satisfaction of the persons authorized by this act to appoint inspectors, then such persons so authorized as aforesaid, are to discharge such inspector and appoint another, as herein directed*. 39 & 40 *Geo.* 3. *c.* 66. *s.* 2.

And it shall be lawful for any shoe-makers, sadlers, or other persons, working or dealing in leather, not being journeymen or apprentices, or persons working with or for any shoe-maker, or worker in leather, for hire, and who shall be then residing and carrying on such trade within any city, liberty, borough, or market town, or the district thereof respectively, and who shall have delivered in writing their names and places of abode, and occupations, to join with any tanners, skinners, curriers, or other persons manufacturing of leather, and authorized to recommend any persons as proper to be appointed inspectors under the above act, in the recommending persons proper to be appointed inspectors, and also to join in the giving any consent in relation to the distribution of any penalties in manner by the said act directed. 41 *Geo.* 3. *sess.* 2. *c.* 53. *s.* 2.

But no recommendation of any persons to be appointed inspectors shall be good unless three tanners, skinners, curriers, or other persons manufacturing leather, at the least shall join in such recommendation; nor shall any such consent of any shoe-maker, sadler, or other person working or dealing in leather in relation to such penalties, be taken, unless three tanners, skinners, curriers, or other persons manufacturing of leather, shall join. 41 *Geo.* 3. *sess.* 2. *c.* 53. *s.* 3.

Gashing of Hides.

If any butcher, or other person, or his servant, shall, after the 1st *August*, 1800, wilfully, negligently, or carelessly cut or flaw, or gash the hide or skin of any ox, bull, cow, heifer, steer, or stirk, or of any horse, mare, colt, or gelding, or

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* See *sec.* 14 of 39 & 40 *Geo.* 3. *c.* 66. *infra.*

of any calf, hog, pig, sheep, or lamb, so as to occasion any injury to the same, or render it less useful for the purpose of making leather, or shall flay any hide of any ox, bull, cow, heifer, steer, stirk, or calf, below the knee, or gambrel, and shall therefore be convicted before one justice of the county, city, or town, where such hide or skin shall be found, upon the oath of any inspector, or other witness, he shall forfeit for every hide or skin, the several fines following (that is to say), not exceeding 5*s*. [41 *Geo.* 3. *sess.* 2. c. 53. *s.* 4.] and not less than 1*s*. for the raw hide or skin of every ox, bull, cow, heifer, steer, or stirk—and not exceeding 2*s*. 6*d*. [41 *Geo.* 3. *sess.* 2. *c.* 53. *s.* 4.] nor less than 6*d*. for the hide or skin of every calf not exceeding 2*s*. 6*d*. [41 *Geo.* 3. *sess.* 2. *c.* 53. *s.* 3.] nor less than 1*s*. for the hide or skin of every horse, mare, or gelding; and not exceeding 6*d*. and not less than 3*d*. for the hide or skin of every hog, pig, sheep, or lamb. 39 *and* 40 *Geo.* 3. *c.* 66. *s.* 4.

But no butcher, or other person, shall be liable to any of the penalties for flaying of any hide of any ox, bull, cow, heifer, steer, stirk, or calf, below the knee or gambrel, in any case where such hide shall not be flayed more than two inches below the knee or gambrel. 41 *Geo.* 3. *sess.* 2. *c.* 53. *s.* 5.

Every person appointed inspector shall take an oath, which the persons appointing are to administer in the words following: viz.

*I, A B, do swear, That I will faithfully and diligently execute the office of inspector of hides and skins, according to the true intent and meaning of an act, passed in the fortieth year of the reign of his majesty King* George *the Third, intituled,* An Act, [*to repeal so much of an act passed in the second year of King* James *the First, as prohibits the use of horse hides in making of boots and shoes, and for better preventing the damaging of raw hides in the flaying them*] *without favour or affection, prejudice, or malice, to any person whomsoever.*

*So help me* GOD.

Inspectors to examine and mark hides.

And every inspector shall examine and mark in manner by this act directed, all raw hides and skins flayed within the district for which he shall be inspector; and shall be entitled to take for examining and marking, the sums following; (that is to say), for the hide of every ox, bull, cow, heifer, steer, or stirk, horse, mare, or gelding, 1*d*.;—and for every calf, hog, or pig skin, $\frac{1}{2}$*d*.—and for every sheep or lamb skin, $\frac{1}{4}$*d*.; and if any person, to whom such raw hide or skin shall belong, or any other person whomsoever, other than such inspector, or some person authorized by him, shall mark any raw skin or hide he shall forfeit 20*l*. 39 & 40 *Geo.* 2. *c.* 66. *s.* 5.

Inspectors may impose penalties for damaging hides without the adjudication of a justice.

It shall be lawful for such inspectors, upon examining of any raw hide or skin that shall have been damaged in the flaying thereof, to impose such penalty not exceeding one half of the highest amount of any penalty imposed by the act in respect of

such damage as shall in the opinion of such inspectors be just, according to the state of such raw hide or skin, without having such penalty adjudged by any magistrate or justice of the peace, subject to the determination of any arbitrators summoned in pursuance of this act, in case the person to whom such hide or skin shall belong, or any person on his behalf, shall dispute the payment of such penalty, and give notice in writing of his determination of having such difference of opinion determined by such arbitrators. *s.* 6.

Exceptions.

But in every case where such inspectors shall deem any such person liable to any higher amount of penalty than such half, then such inspectors shall proceed for the recovery thereof by information before any magistrate or justice as by this act directed. *s.* 7.

Application of penalties.

And one half of all such penalties and forfeitures shall go to the inspector; and the other half thereof shall go and be applied for the better carrying into execution the purposes of the said act.

But nothing herein contained shall extend to prevent the rewarding any inspector with any proportion of such other half part of such penalties, or any sum of money arising therefrom as hereinafter mentioned. 41 *Geo.* 3. *sess.* 2. *c.* 53. *s.* 7.

Inspectors to provide proper stamps, and to stamp hides.

Every inspector shall provide two stamps, the one thereof the letter S. to denote good and perfect raw hides and skins, and the other thereof the letter D. to denote damaged hides or skins; with the first of which he shall stamp on or near the tail, every raw hide or skin that is not damaged, and with the latter he shall stamp on one of the fore shanks, every hide or skin that is damaged, upon being paid the penalty imposed; and if any person shall refuse to pay the penalty, or shall refuse or neglect to pay the sums herein-before allowed to be taken for inspecting, examining, and marking, it shall be lawful for the inspector forthwith to seize such raw hide or skin; and unless such penalty shall be paid in less than forty-eight hours after seizure, or unless notice shall be given by the person to whom such hide or skin shall belong, of his intention of having such hide or skin produced, and the dispute thereon decided by arbitrators, it shall be lawful for such inspector to sell the same, and to retain the penalty, and every reasonable expense incurred therein, and the overplus (if any) shall be returned. 39. & 40 *Geo.* 3. *c.* 66. *s.* 9.

Penalty on butchers neglecting to bring hides to be marked.

If any butcher or other person, residing in any city, town corporate, borough, or market-town, or within the district thereof, shall wilfully neglect or omit to bring any raw hide or skin belonging to him, of any ox, bull, cow, heifer, steer, or stirk, horse, mare, or gelding, calf, hog, pig, sheep, or lamb, by this act required to be stamped, to some place appointed in pursuance of this act, within the hours prescribed; or if any butcher, or other person, shall remove from such place, any such hide or skin, that shall not have been examined and marked by some inspector, or by some person authorized by him,

and approved by any magistrate of the district; every such butcher, or other person, shall forfeit not exceeding 5*l.* nor less than 40*s.* for every hide, or skin, neglected or omitted to be brought to such place for inspection, and within the hours prescribed, or so removed, before such hide or skin shall have been stamped as aforesaid. *s.* 10.

Within ten days.

And every butcher or other person required to bring raw hides, or skins, to any place appointed for the examining thereof, shall bring every such hide, or skin, to such place, within ten days from the time of flaying thereof, on pain to forfeit the penalties imposed. 41 *Geo.* 3. *sess.* 2. *c.* 53. *s.* 6.

Persons intending to carry their hides to some other place to give notice.

But if any such butcher, or other person, shall give notice in writing to the inspector of his intention of carrying his raw hides, or skins, to any other place where any inspector shall be appointed under this act, for not less than one calendar month, following the date of such notice, then such butcher may carry such hides, or skins, to such other place, during the period mentioned in such notice, for the purpose of having the same examined and marked in pursuance of this act, and he may from time to time renew such notice, for not less than one calendar month. 39 & 40 *Geo.* 3. *c.* 66. *s.* 11.

Disputes how to be settled.

In case any difference of opinion shall arise between any butcher, or other person, and any inspector, whether any hide or skin has been injured in the flaying thereof, or rendered less useful for the purpose of leather, within the meaning of this act, then it shall be lawful for any magistrate or justice of the peace before whom such dispute shall be brought, within forty-eight hours, to summon five impartial persons, who shall be engaged in the manufacturing of leather, to whom or to any three of such persons, such difference shall be referred, and who are to hear and finally determine the same within twenty-four hours; and before any such person so summoned shall act, he shall take an oath before such magistrate or justice that he will do equal justice between the parties, and such magistrate or justice shall cause the raw hide, or skin, whereon such dispute shall arise, to be produced to such persons, and such dispute to be heard before them; and the decision of such persons, or the major part of them, shall be conclusive on all the parties, and the party against whom such decision shall be given shall pay the costs of summoning, and attendance of such persons, and all incidental expenses incurred thereby, to be ascertained by the magistrate or justice. *s.* 12.

Persons summoned not attending.

If any person duly summoned upon such difference, shall refuse or neglect to attend, unless he shall give such reason as may be deemed satisfactory by the magistrate or justice, he shall forfeit 40*s.* *s.* 13.

Penalties how recoverable.

1. Every penalty and forfeiture shall be recoverable before one justice of the peace, or any magistrate of any city, town corporate, borough, liberty, or place where the offence shall be committed, upon conviction or confession of the party, or on the oath of one witness, and such penalty shall be levied by distress and sale; and in case such distress cannot be found, and such penalty, and the costs, shall not be forthwith paid, such justices, or magistrates are by warrrant, to commit such offender to the common gaol or house of correction for not exceeding one month, [*or*] until the said penalty and costs shall be sooner paid. 39 & 40. *Geo.* 3. *c.* 66. *s.* 16.

Penalties how to be applied.

All penalties and forfeitures not otherwise disposed of shall go and be distributed in manner following; (that is to say,) one half shall go to the person who shall inform and prosecute to conviction every such offender; and the other half shall go and be applied for the better carrying into execution the purposes of this act, either in rewarding, with any proportion thereof, any inspector acting in the district, or in paying any expenses as have arisen in establishing such places for the inspection of hides and skins, or for any purpose relating to the care, improvement, or continuing of such places, in such proportion, as the persons appointing such (places to whom such last mentioned moiety, when recovered shall be, paid), shall with the approbation of any six or more, or in case of any difference of opinion, of the majority of the persons dealing in the manufacture of leather (not being journeymen or apprentices, or persons working with or for any master currier, or manufacturer of leather for hire), who shall deliver their opinions in writing to such persons in manner herein-before directed, with respect to the recommendation of inspectors), direct; and if any person to whom such moiety shall be paid, shall misapply such monies, or neglect or refuse to apply the same to the purposes of this act as before directed, he shall forfeit double the sum retained or misapplied, to be sued for and applied as any penalty by this act imposed may. *s.* 14.

Appeal.

But any person aggrieved by the judgment of any such justice or magistrate, where the penalty adjudged shall exceed 10*s*, may, upon giving security to the amount of the penalty, together with such costs as shall be awarded in case such judgment shall be affirmed, appeal to the next general or quarter sessions, and in case the judgment of such justice shall be affirmed, such justices at their general or quarter sessions are to award the person to pay such costs occasioned by such appeal as to them shall seem meet; and no such judgment or conviction shall be removable by *certiorari*. *s.* 17.

Acts extended to London.

And by the stat. 43 *Geo.* 3. *c.* cvi, these statutes are extended to *London*, *Westminster*, and *Southwark*, and to places within fifteen miles of the *Royal Exchange* of *London*; and all hides flayed within five miles of the *Royal Exchange* are

to be brought to *Leadenhall Market* to be inspected, and sheep and lamb skins to one of the three sheep skin markets, *viz. Wood's Close*, *Clerkenwell*, *Southwark* or *Whitechapel*.

Every information made under the above act for wilfully, negligently, or carelessly cutting, flaying, or gashing, any raw hide or skin, shall be made under the said act, and this act, within three days after such raw hide or skin, in respect whereof any such information shall be made, shall have been inspected; and it shall be lawful for any inspector or other person to lay any other information for any other offence committed against the said act or this act, at any time within fourteen days after such offence shall be committed. 41 *Geo. 3. sess. 2. c. 53. s. 8.* — Limitation of prosecution.

And every such conviction may be made in the form following. 39 & 40 *Geo. 3. c. 66. s. 19.*

*Be it remembered, That on the* ——— *day of* ——— *in the year* ——— A. B. *was, upon the complaint of* C. D. *convicted before* ——— *of the justices of the peace for the said county of* ——— or, *for the riding or division of the said county of* ——— or, *for the said city, liberty, district, or town of* ——— [*as the case may happen to be* ], *in pursuance of an act passed in the fortieth year of the reign of his majesty King* George *the Third, for* [or, *as the case may be.*] *Given under* ——— *hand and seal, the day and year above written.* — Form of conviction.

Which conviction shall be certified to the next general quarter sessions, there to be filed amongst the records. 39 & 40 *Geo. 3. c. 66. s. 19.*

All the clauses, provisions, penalties, forfeitures, regulations, matters and things, in the said act and this act contained, relating to the examining any raw hides or skins shall extend to all raw hides and skins flayed in *Great Britain* that shall be brought or found within the limits of any district, without reference to whether any such hides or skins shall have been flayed within the limits or not. 41 *Geo. 3. sess. 2. c. 53. s. 9.* — Act to extend to all hides found in Great Britain.

And if it shall be made out by the oath of any credible person to the satisfaction of any magistrate or justice of the peace, that any person, whether living within or out of the jurisdiction of such magistrate or justice, is likely to give material evidence on behalf of the prosecutor, or on behalf of the person accused, and will not voluntarily appear, such magistrate or justice is to issue his summons to convene such witness before him at such seasonable time as in such summons shall be fixed, *although such person shall not be within the jurisdiction of such magistrate or justice*; and if any person so summoned shall neglect or refuse to appear he shall forfeit 40*s.* to be recovered as any other penalty under the said act or this act, and to be applied towards carrying into execution the purposes of the said act and this act; — Power to summon witnesses.

provided that no person shall be obliged to travel by reason of such summons more than six miles. *s.* 10.

The act of 1 *Jac.* 1. *c.* 22. to be enforced.

By 9 *Anne*, *c.* 11, all mayors or other head officers in the cities, boroughs, and market-towns, and the lords of liberties, fairs, and markets, and the masters and the wardens of the several companies, and all tanners, curriers, shoemakers and others, shall duly observe the statute 1 *Jac.* 1. *c.* 22, in relation to the tanning or other matters concerning leather. *s.* 10.

*And in respect to this matter, the following provisions have been made:*

Watering hides, or putting to sale rotten ones.

And by 1 *Jac.* 1. *c.* 22, no butcher shall water any hide, except in *June*, *July*, and *August*; nor shall put to sale any hide being rotten, upon pain of forfeiture for every hide 3*s.* 4*d.* *s.* 2.

Who may buy rough hides, or calve-skins.

And no person shall buy or bespeak any rough hide, or calve-skin in the hair, but only such as may use the craft of tanning of leather *, and shall tan the same (except salt hides for the necessary use of ships), upon pain to forfeit all such hides and skins, or the value thereof. *s.* 7.

Forestalling of hides.

And no tanner, or other person shall forestall any hides coming towards any fair or market, nor buy any hide other where than in open fair or market, unless it be of such persons as shall kill the beast for the provision of their own houses, (or the same shall be slaughtered for the service of his majesty's navy, 39 *Geo.* 3. *c.* 54.) upon pain of forfeiture for every hide 6*s.* 8*d.* *s.* 7.

Who may be a tanner.

And no person shall tan any leather, or use, take or have any profit, gain, or commodity, of or by the said craft or mystery of tanning leather, except such person or persons as had a tan-house at the beginning of that session of parliament, and did then occupy the mystery of tanning leather, and except such as have been instructed, taught, or brought up as apprentices, or covenant or hired servants for that purpose, by the space of seven years, in the mystery of tanning of leather; and except the wife, and such son or sons of a tanner as hath been brought up and taught the mystery of tanning of leather by the space of four years, or the son or daughter of a tanner, or such person who shall marry such wife or daughter, to whom he hath or shall leave a tan-house and fats; upon pain of forfeiture of all leather by them tanned, or whereof they shall receive any profit of tanning, or the just value thereof †. *s.* 5.

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* See sec. 5, infra.

† In a conviction for the penalty created by this statute, the exemptions contained in this clause must be set out expressly, and negatived in the information, otherwise it will be bad. *Rex* v. *Pratten*, Hil. Ter. 6 Geo. 3. 6 Ter. Rep. 559.

But no butcher shall use by himself, or any other, the craft of a tanner during the time that he shall use the occupation of a butcher, upon pain of six shillings and eight pence for every day. *s.* 4. No butcher shall be a tanner.

And no person using tanning of leather shall, during the time that he shall use the said mystery, use the craft of a shoemaker, currier, butcher, or of any other artificer cutting or working of leather; upon pain to forfeit all such hides and skins, or the value thereof. *s.* 6. No tanner shall be a cutter of leather.

And no person shall buy, sell, bespeak, or exchange any tanned leather, not wrought into made wares, but only such persons as shall work the same into made wares, upon pain of forfeiture of the leather so bought, &c. or the value thereof. *s.* 8. Who may buy tanned leather not wrought.

But by 1 *Will.* and *Mar. st.* 1. *c.* 33, all persons dealing or working of leather may buy all sorts of red tanned leather, *in any open fair or market*, curried or uncurried, the same being first searched and sealed, and may sell the same again in their shops, or convert it to other made ware, according to their trade. *s.* 5.

And by 12 *Geo.* 2. *c.* 25, it shall be lawful for all leather-sellers, curriers, shoemakers, and other dealers in leather, to buy all sorts of tanned leather, *in any open market*, whether curried or uncurried, such leather being first searched and sealed according to law, and to cut and sell the same in small pieces in their public shops. *s.* 1.

By 1 *Jac.* 1. *c.* 22, no persons shall regrate, engross or get into their hands by buying or promise taking, any oaken bark, before it be stripped, or after to the intent to sell the same again, upon pain of forfeiture of all such bark, or value thereof. *s.* 19. Oak bark.

And no person shall sell any oaken trees meet to be barked whose bark is worth 2*s.* a cart load, over and above the charges of barking and pilling, timber to be employed for necessary building or reparations of houses, ships, or mills, excepted, but between 1 *April* and *June* 30, upon pain of forfeiture of every such oak tree, or double the value. *s.* 20.

No person whatsoever which shall use tanning of leather, shall suffer any hide or skin to lay in the limes till the same be over-limed, nor shall put any hides or skins into any tan fats before the lime be perfectly sokened and wrought out of them—nor shall use any stuff in the workmanship or tanning of leather but only ash-bark, oak-bark, tapwort, malt, meal, lime, culver-dung, or hen-dung—nor shall willingly suffer his leather to be laid, or to hang, or to lie wet in any frost, until the same be frozen—nor shall dry or parch the said leather with the heat of the fire, or of the summer sun—nor shall tan any hide or skin putrefied or rotten—nor suffer the hides for utter sole-lea- How hides shall be used in tanning.

ther to lie in the woozes any less time than twelve months at the least—nor the hides for upper leathers less than nine months—nor shall negligently work the hides into the woozes, but shall renew and make strong their woozes, as often as shall be requisite—nor shall put to sale any tanned hide or skin wrought in any other sort than by this statute appointed, upon pain of forfeiture of every hide or skin, or the value thereof *. *s.* 11.

Rasing of hides with mixtures.

And no person using tanning shall rase with any mixtures any hide to be converted to backs, bend-leather, clouting-leather, or any other sole-leather, except the same be for largeness, state and growth, fit for that use, to be tried by the triers hereafter appointed, upon pain of forfeiture of all such hides. *s.* 12, 13.

Causing leather to take unkind heats.

And no person shall set their fats where the woozes or leather that shall be put to tan in the same, shall take any unkind heats, or shall put leather into warm woozes, or shall tan any hide, calve-skin or sheep skin, with warm woozes, upon pain to forfeit 10*l.* and stand upon the pillory three market days in the next market-town, *s.* 16, 17.

Shaving hides.

Also by 13 & 14 *Car.* 2. *c.* 7, every tanner who shall, shave cut, and rake their upper leather hides, and the necks of their backs and buts, shall forfeit the leather, backs, buts or calve-skins so shaved, cut, or raked, or the value thereof; and it shall be lawful for the searchers and sealers to seize the same. *s.* 8.

And by 3 *Ann*, c. 11, if any tanner or other person shall shave any hide or calve-skin before the same be thoroughly tanned, whereby the same shall be impaired and the duty diminished, the same, or the value thereof, shall be forfeited. *s.* 12.

Putting to sale leather insufficiently tanned.

And by 1 *Jac.* 1. *c.* 22, if any person using the mystery of tanning shall put to sale any leather which shall be insufficiently tanned, or which shall not have been after the tanning thoroughly died, every such person shall forfeit so much leather as shall be found insufficiently tanned, or not thoroughly died, *viz.* the whole hide, or so much thereof as is not sufficiently tanned, to be cut out by the triers. *s.* 15.

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* But in consequence of a newly invented mode of tanning, it is provided by 34 *Geo.* 3. *c.* 63, *Samuel Ashton*, of *Sheffield*, in the coun- of *York*, painter, and his executors, administrators and assigns, during the term of his letters patent, *and also any person or persons whomsoever, after the expiration of the said term*, may tan hides and skins in the manner and according to the method and with the materials mentioned in his specification; any act to the contrary notwithstanding.

And the same shall be chargeable with the duties of excise as tanned hides and skins. 35 *Geo.* 3. *c.* 97.

No person occupying the mystery of a currier shall use the mystery of a tanner, cordwainer, shoemaker, butcher, or other artificer using the cutting of leather, during the time that he shall use the mystery of a currier; upon pain of forfeiting 6*s*. 8*d*. for every hide or skin that he shall curry. *s* 25.

Who may be a currier.

And no person shall curry leather in the house of any other person, but only in his own house situate in a corporate or market-town; nor shall curry any hide or skin not thoroughly dry, after his wet season; in which wet season he shall not use any stale or deceitful mixture to hurt the same; nor shall curry leather meet for utter sole leather, with other stuff than hard tallow, nor of less of that than the leather will receive; nor shall curry any leather meet for over-leather and inner soles, but with good stuff, fresh and not salt, and thoroughly liquored till it can receive no more; nor shall burn or scald any hide or leather in the currying; nor shall shave any leather too thin; nor shall gash or hurt any leather; but shall work the same sufficiently; upon pain of forfeiture for every offence (other than in gashing or hurting in shaving) 6*s*. 8*d*. and the value of every such skin or hide; and for every offence in gashing or hurting by shaving, double so much to the party grieved, as the leather shall be impaired, by the judgment of the wardens of the curriers, and the warden of the company whereof the party grieved shall be. *s*. 22.

Manner of currying leather.

And every artificer dealing in cutting of leather, or other person who shall buy any red tanned leather, within *London or three miles thereof*, shall, before the next market day for sale of leather, give notice thereof to one of the curriers company, and in three weeks after shall deliver the leather so brought (except what shall be used for soles without being curried, tallowed, or dressed) to the said currier to be curried, tallowed, or dressed, on pain of 6*s*. 8*d*. for every back, butt, hide, or calveskin. 13 & 14 *Car*. 2. *c*. 7. *s*. 13.

No currier shall refuse to curry any leather to him brought by any cutter of leather, the same artificer bringing stuff for liquoring the same; and the said leather, in the presence of the said artificers (if they will be present,) shall be liquored and curried perfectly; and if they will not be present, it shall be liquored and curried perfectly, with convenient speed, not exceeding eight days in summer, and sixteen in winter; upon pain to forfeit to the party grieved, for every hide or piece of leather 10*s*. 1 *Jac*. 1. *c*. 22. *c*. 26.

Within what time leather shall be curried.

And for making more effectual such last clause, it is enacted by 12 *Geo*. 2. *c*. 25, that if any currier shall refuse to curry any leather brought to him for that purpose by any leather-sellers, shoemakers, or other persons whatsoever, who deal or work in leather, or shall neglect to curry the same within sixteen days, between 28th *September* and 25th *March* following and within eight days in the remaining part of the year, such

Penalty on curriers refusing to curry any leather within a limited time.

currier shall for every such offence, being thereof convicted before one justice, by the oath of one witness, forfeit five pounds, to be recovered by distress and sale of goods, rendering the overplus, after deducting the expense of distress and sale, to the owner, one moiety to the informer, and the other moiety to the poor of the parish where the offence shall be committed. *s.* 4.

But the said justice, where he shall see cause, may mitigate any such penalties according to his discretion. *s.* 5.

And if any person shall think himself aggrieved he may appeal to the next general quarter sessions, whose determination shall be final, and no *certiorari* shall be allowed. *s.* 6.

Curried leather to be searched and sealed.

And the wardens of the curriers, or such persons as they shall appoint, shall search all curried leather brought to any of their company to be curried; and shall with a seal, with all convenient speed, not exceeding one day after request, seal such leather as they shall find sufficiently curried, taking after the rate of a penny for the dicker, and for every six dozen of calves-skins, 1*d.* to be paid by the currier; upon pain of forfeiture for every hide. 6*s.* 8*d.* 1 *Jac.* 1. *c.* 22. *s.* 27.

Searchers and sealers of tanned leather within London.

By the said stat. 1 *Jac.* 1. *c.* 22, the mayor of *London*, and the aldermen, upon pain of 40l. shall yearly appoint eight persons, being freemen of some of the companies of cordwainers, curriers, sadlers, or girdlers, whereof one shall be a sealer, and keep a seal for sealing leather, who shall be sworn before the mayor and aldermen: which searchers and sealers shall search every tanned hide, skin, or leather, which shall be brought as well to Leadenhall, as to any other fair or market within three miles of the city; and finding it sufficiently tanned and dried, shall seal the same. *s.* 31.

And four of the said searchers and sealers in *London* shall be every year changed, and so many new chosen; and no person shall continue in the office of searching or sealing of leather in *London* above two years together; and they which shall serve in the office two years, shall not be chosen again until the end of three years; upon pain that every person offending shall forfeit for every month 10*l.* *s.* 36.

In other places.

All mayors, and other head officers in cities, boroughs, and market-towns, and all lords of liberties, fairs and markets out of *London*, or the compass of three miles thereof, shall upon like penalty of 40*l.* appoint or swear yearly two or more persons to search within their liberties, which shall make like search within their limits as in *London*, and shall have a seal for that purpose. And if the searchers find any leather sold, or offered to be sold, or brought to be searched, which shall be tanned or used contrary to this statute, or any leather insufficiently curried, or

any boots, shoes, bridles, or other thing made of tanned or curried, insufficiently tanned, curried, or wrought leather, it shall be lawful to the searchers to seize all such leather, shoes, or other wares, and to retain the same until the same be tried by triers. *s.* 32.

Searchers or sealers refusing to seal leather, or guilty of extortion.

If any searcher or sealer shall refuse with convenient speed to seal any leather sufficiently tanned, wrought, and used, or allow that which is insufficient, he shall forfeit 40*s*. And if any searcher shall receive any bribe, or exact any other fee than is by the statute limited, for the searching, sealing, and registering of leather, he shall forfeit 20*l*. And if any person elected to the office of searching or sealing of leather refuse to execute the said office he shall forfeit 10*l*. *s.* 37.

Refusing to let them search.

And if any person wilfully deny such search to be made, or will not suffer the masters and wardens of the company, or searchers so appointed, to enter into his house or other place, to search all tanned leather, and all shoes, boots, mails, saddles, coach coverings, and harness, and all wares, made of leather, and to seize and carry away all such leather, shoes, and wares, as they shall find insufficiently tanned, curried or wrought, or made of ill stuff; every person so denying, &c. shall forfeit 5*l*.* *s.* 40.

When leather is seized six triers thereof to be apponted in London.

The mayor of *London*, within six days after notice of any seisure within the city, or three miles from the same, either by the owners, or the seizers of the said leather, shall appoint six men, whereof there shall be, of the better sort of cordwainers two, of curriers, two, and other two of the better sort of tanners using *Leadenhall* market, who shall be no kin to the owners, who upon their oaths, shall on the second or third market day (upon the Tuesday, 13 & 14 *Car.* 2. *c.* 7, *s.* 9.) for leather next after the seizure, in the afternoon, try whether the leather so seized shall be sufficient or not.† *s.* 33.

And the like number in other places.

And every other mayor, or head officer, or lord of liberty out of the said compass of three miles, within whose liberties

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* But this penalty does not attach upon a tradesman who purchases such goods ready made though with intent to sell again but only upon the original makers of such ill wrought goods for if he were liable to have his frame searched and the goods seized and carried away, the same liability would be incurred by every person who was a purchaser of them for his own use, which is quite beside the object of the legislature in framing the act. *Mason qui tam.* v. *Middlesex*, Hil. 43 Geo. 3. 3 *East's Rep.* 334.

† A condemnation by four out of the six triers (the whole number being met for the purpose of trying) must be considered as the condemnation of all; for where a power of a public nature is committed to several, who all meet for the purpose of executing it, the act of the majority will bind the minority. *Grindly et al.* v. *Barker* and others, *Ea.* 38 *Geo.* 3. 1 *Bos.* and *Pul.* 229.

any such seizure shall be, shall with convenient speed, after notice of any such seizure, appoint six men to try whether the same leather, boots, shoes, or other wares be sufficient or not; the same trial, to be made openly upon some market day, and within fifteen days after such seizure made upon the oaths of the triers. *s.* 34.

Penalty on mayor not appointing triers.

If the mayor of *London*, or the mayor, or head officer of any liberty, shall make default in the nomination of triers he shall forfeit 5*l.* the one moiety to the king, and the other to him that will sue for the same in any of the king's courts of record. *s.* 35.

Triers misbehaving.

And the persons elected for trial of the said leather, shoes, boots, or other wares, shall proceed therein without delay upon pain to forfeit 5*l.* *s.* 35.

Leather may be sold by weight.

By 1 *Will.* and *Mar. sess.* 1. *c.* 33, any persons may buy or sell leather, hides, or skins by weight. *s.* 35.

But not unsealed.

But by 1 *Jac.* 1. *c.* 22, no person shall put to sale any tanned leather red and unwrought but in open fair or market, unless the same hath been first searched and sealed, nor shall offer to sale any tanned leather red and unwrought before it be marked and sealed: on pain of forfeiting the same, or the value thereof, and also for every hide or piece 6*s.* 8*d.* and for every dozen of calve-skins 3*s.* 3*d.* *c.* 14.

Except sheepskins.

Nevertheless, no person shall incur any penalty for housing, selling, or buying of any tanned sheep-skins unsearched or unsealed, so as the said sheep-skins be wrought and converted into made wares. 4 *Jac.* 1. *c.* 6. *s.* 2.

And to be sold only in open market.

*And in order to restrain the exportation of leather and raw hides*, it is provided by 13 & 14 *Car.* 2. *c.* 7, that all red tanned leather, made of the hides or skins of any steer, bull, cow, or calf, shall be bought only in open fair or market used for putting leather to sale, and not in any house, tanner's yard, shop, or other place, on pain to forfeit the leather, or the value thereof; and the contract for the sale thereof shall be void; and all such leather shall be searched and sealed before the same be put to sale, and upon such sale shall be registered and entry thereof made by the buyer or seller, who are both to be present at such registering, on pain that every such buyer and seller that shall not do the same shall forfeit the leather or the value thereof. *s.* 4.

Registering of leather sold and bought, and the fees thereof.

And the searchers and sealers shall keep one book, wherein they shall enter all bargains made for leather, hides, or skins, during the time of the fair or market, being required by the buyer or seller, and the prices: taken for searching, sealing, and registering of every ten hides, backs, or butts, with the necks, wombs, or dibbings, or other offal, of the seller, 2*d.* and for every six dozen of calves skins, or sheep skins, 2*d.* and of the buyer the same. 1 *Jac.* 1. *c.* 22. *s.* 41.

And all red tanned leather which shall be brought into the city of *London*, or within three miles compass from the same, shall be brought to *Leadenhall*, before it be housed, and there

viewed whether it hath been searched or sealed, and shall also be registered by the searchers, with half such fees to be paid for such of the said tanned leather as shall be brought out of *London*, or within three miles compass from the same, and shall be searched and sealed before it be brought within the city, upon pain that every person housing, or not bringing his leather to *Leadenhall*, as aforesaid, shall forfeit for every hide or skin, 6*s*. 8*d*. *s*. 38.

And no person shall sell or put away any tanned leather, red or unwrought, except he register the said leather, and the price thereof, upon pain of forfeiture of the value of the leather. *s*. 42.

Nor shall it be lawful to buy any tanned leather before the same be searched and sealed, nor to carry out of the fair or market any leather till it be registered, upon pain to forfeit the said leather or the value thereof. *s*. 43.

Shoemakers duty in making of boots, &c.

No cordwainer shall make any boots, shoes, buskins, star-tops, slippers or pantofles, of *English* leather, wet curried (other than deer-skins, calve-skins, or goat-skins, dressed like *Spanish* leather), but of leather well tanned and curried, or of leather well tanned only, and well sewed with good thread, well twisted and sufficiently waxed with wax well rosined, and the stitches hard drawn with hand leathers, as accustomed, without mixing over-leathers, *viz*. part of the over-leather of neats-leather, part calves-leather; nor shall put into any shoes, &c. leather made of sheep-skins, or bull-hide *, nor in the upper leather of any shoes, &c. or into the nether part of any boots (the inner part of the shoe excepted) part of any hide from which the sole leather is cut, called the wombs, necks, shank, flank, poll or cheek; nor shall put in the utter sole any other leather than the best of the ox or steer-hide, nor into the inner sole any other leather than the wombs, neck, poll or cheek, nor in the treswels of the double soled shoes, other than the flanks of the hides aforesaid; nor shall make, or put to sale, between the last of *September* and the twentieth of *April*, any shoes, &c. meet for any person to wear exceeding the age of four years, wherein shall be any dry *English* leather, other than calve-skins or goat-skins dressed like *Spanish* leather; nor shall put to sale any shoes, &c. upon *Sunday*, upon pain of forfeiture for every pair of shoes, &c. 3*s*. 4*d*. and the value of the same. *s*. 28.

The penalty of the currier or cordwainer omitting his duty.

And if any currier within *London*, or three miles compass of the same, do curry any leather insufficiently tanned, or do not curry leather substantially and well, according to this act;

Or if any shoemaker, cordwainer, or cobler within the like distance, put any tanned leather into any shoes, boots, buskins, startops, slippers, pantofles, or other things made of tanned leather, which shall not be well and perfectly tanned, or put any curried leather into any boots, buskins, startops, shoes, slippers, pantofles, or other things made of leather, which shall not be well and sufficiently tanned and curried, and also sealed,

* This act also prohibited the use of *horse-hides*, but in this respect it is repealed by 39 and 40 *Geo*. 3. *c*. 66.

as aforesaid; or do make boots, buskins, shoes, startops, slippers, pantofles, or other things made of *English* tanned leather, in any other manner than as above ordained:

Or, if any shoemaker, saddler, or other artificer, using cutting, or working of leather, do make any wares of any tanned leather insufficiently tanned, or of tanned or curried leather not sufficiently tanned and curried, or do not make their wares belonging to their several occupations sufficiently and substantially:

Then every person so offending shall forfeit for every such several offence the said wares and the value thereof. *s.* 44.

What shall be deemed leather.

And for avoiding doubts, the hides and skins of ox, steer, bull, cow, calf, deer, red and fallow, goats and sheep, being tanned or tawed, and every salt hide, shall be reputed leather. 1 *Jac.* 1. *c.* 22. *s.* 49.

What dry currying and frizing.

And all dry currying and frizing shall be construed to be dressing and currying of the manner of *Spanish* leather; and to all artificers, other than shoemakers, yearly, between the last of *September* and 20th *April*, it shall be lawful to use leather dressed and curried in that manner, so that the same be sufficiently tanned and well dressed, curried and frized. 1 *Jac.* 1. *c.* 22. *s.* 52.

Search in London for insufficient made wares.

And the master and wardens of the mysteries of cordwainers, curriers, girdlers, and saddlers of *London*, upon pain to forfeit 40*l.* for every year they make default, the one half to the king, and the other half to him that will sue for the same, shall four times in the year, *viz.* once every quarter or oftener, make search for all boots, shoes, *and other wares made of tanned leather*, in all places as well within the city of *London* and suburbs, as in every other place within three miles of the same, where any artificer using, cutting, working, or dressing leather shall dwell; and the said masters and wardens may seize and carry away to their common halls, all such boots, shoes, or other things, which they shall find in their searches insufficiently made, curried, or wrought. *s.* 29.

But none of the said masters and wardens shall search any persons but such as use the occupation of the said master and wardens—and the coachmakers of *London*, or three miles from the same, shall be under the survey of the master and wardens of the company of saddlers. *s.* 30.

What shall be deemed made wares.

And by 1 *Will.* and *Mary*, *stat.* 1. *c.* 33, any hide, skin, or piece of tanned leather, shaved or liquored, and well curried according to the above act of 1 *Jac.* 1. *c.* 22, shall be adjudged made ware and manufacture of the currier, and subject to the view, search, and seizure of the master and wardens; and shall be liable to the same penalties as other wares insufficiently made of tanned leather. *s.* 3.

But nothing in this act shall give power to the master and wardens of the company of curriers, to search or seize any leather, hide, or skin, but such as shall be curried in *London*, or within three miles thereof, by some members of their own com-

pany, nor in any other place but the open market place, or in the shops, houses, or warehouses of such curriers. *s.* 4.

No selling of wares in London, but in open shop, fair, or market.

And no person shall utter or sell, within *London*, or within three miles thereof, any manner of wares appertaining to the craft of any artificer using cutting of leather, but only in open shop, common fair, or market, whereby the wardens may have search of the same, upon pain of forfeiture of all such wares so sold, and ten shillings for every time. 1 *Jac.* 1. *c.* 22. *s.* 45.

The penalty for denying of search or seizing of insufficient wares.

And if any person wilfully deny any such search to be made, or will not suffer the masters and wardens of the several companies of cordwainers, curriers, girdlers, or saddlers, or other searchers so appointed, to enter into his house, to search all tanned leather, and all shoes, boots, mails, saddles, coach coverings and harness, and all manner of wares made of leather, and to seize and carry away all such as they find insufficiently tanned, curried or wrought, or made of ill stuff; every such person shall forfeit five pounds. *s.* 40.

Exportation.

All sorts of leather and skins, tanned or dressed, may be exported. 20 *Car.* 2. *c.* 5. 9 *Ann.* *c.* 6. *s.* 4.

*How the foregoing forfeitures are to be recovered and applied.*

All *forfeitures of money, by the act* 1 *Jac.* 1. c. 22, (except such as are by that act otherwise disposed) shall be divided into three parts; one part to the king, and another part to him that shall sue for the same, and the third part to the city, town, or lord of liberties where the offence shall be committed. 1 *Jac.* 1. c. 22. *s.* 46.

And all such leather, shoes, boots, buskins, startops, slippers, pantofles, wares, stuff, or things made of tanned leather or curried leather, which shall be seized and found insufficient, shall be forfeited and distributed as followeth, *viz.* such stuff seized within *London*, or three miles of the same, shall be brought to *Guildhall* to be prized, and the value thereof divided into three parts, whereof one to be to the seizor, and another part to the chamber of *London*, and the other part to the poor, as well within the hospital of St. *Bartholomew*, as to poor householders in the circuit aforesaid, at the discretions of such persons as the mayor and four aldermen shall appoint. 1 *Jac.* 1. c. 22. *s.* 46.

And all such leather, boots, shoes, saddles, wares, stuff and things found within any other city, borough, town or place, insufficiently wrought, tanned or curried, and seized and tried to be forfeited, as aforesaid, shall be brought to the common hall of such town, or to some open place to be appointed by the lord of the liberty, or his deputy, where no common hall is, there to be prized as aforesaid; one part of the value to be disposed unto the poor, and in other deeds of charity, after the discretion of the mayors, bailiffs, head-boroughs, and lords of liberties, another part to be delivered to the mayors, bailiffs, and other head officers, to the use of the commonalty; and where no such officers be, then to the lord of the liberty, and the third part to the seizor for his pains. 1 *Jac.* 1. *c.* 22. *s.* 46.

And justices of assize, of gaol delivery, justices of peace, and stewards of leets, and the mayor of *London* for the said city and three miles compass, and all other mayors, bailiffs, and head officers within their jurisdictions, shall inquire of the premises in their sessions, leet, or law day, and hear and determine the same, and also examine all persons suspected to offend against this act. 1 *Jac.* 1. *c.* 22. *s.* 50.

And where any manor or franchise appertaineth to the king, the steward shall have the powers, and bear the penalties appointed to the lords of liberties. 1 *Jac.* 1. *c.* 22. *s.* 51.

*And inquire of the premises in their sessions.*] The above statute of 1 *Jac.* 1. *c.* 22, doth not give to mayors and other like officers, a personal and summary jurisdiction in regard to the offences therein provided against, but only an authority in the terms of the common commission of *oyer* and *terminer*: their jurisdiction herein must therefore be exercised according to the course of the common law, that is, by way of INDICTMENT. 1 *Burrows' Rep.* 389.

Forfeited ware shall not be sold to him that will sell it again.

But no person to whom such unlawful leather or stuff shall be given, shall give or sell the same to any person that shall sell the same, upon pain that the buyer shall forfeit for every parcel three shillings and four-pence. 1 *Jac.* 1. *c.* 22. *s.* 46.

Also by 9 *Anne*, *c.* 11, it shall be lawful for any two justices of peace, residing near the place where any forfeiture upon that act shall be incurred, or where any offence shall be committed against the act, (1 *Jac.* 1. *c.* 22,) to hear and determine the same. *s.* 36.

And such justices are required upon any information or complaint within three months after seizure made or offence committed, to summon the party and witnesses, and on appearance, or contempt in not appearing (upon proof of notice), to proceed to the examination of the witnesses, and to give judgment: and where the party shall be convicted, to issue warrants for levying any pecuniary penalties on the goods of the offender, and to cause sale to be made if they be not redeemed within six days; and either party may appeal to the quarter-sessions, who shall finally hear and determine; and in case of conviction issue warrants for levying the penalties. *s.* 35.

And all forfeitures and sums by the act of the 13 & 14 *Car.* 2. c. 7, shall be recovered in any court at *Westminster*, or in any court of record, in the city, town, county, or place, where the offence shall be committed; to be distributed half to the king and half to the informer. 13 & 14 *Car.* 2. *c.* 7. *s.* 10.

For the duties on leather, see the title *EXCISE*, see. *Hides* and *Skins*.

## *V. Linen Cloth.*

Penalty for stretching or impairing of linen cloth.

"Whereas certain evil-disposed persons do, by sundry devices, "stretch linen cloth both in length and breadth; and that done,

"do then with battle-doors, pieces of timber and wood, and "other things beat the same, casting thereupon certain deceitful liquors mingled with chalk and other like things, whereby "the cloth is not only made finer and thicker to the eye than "it is, but also the threads thereof be loosed and made weak:" It is therefore enacted by 1 *Eliz. c.* 12, that if any person shall willingly use the aforesaid deceits, or any other acts, with any kind of linen cloth, whereby the same shall be deceitful or worse for use, the cloth shall be forfeited, and the offender punished by one month's imprisonment, and shall pay such fine as shall be assessed for his offence, by the justices before whom he shall be condemned. *s.* 1.

And the justices of *oyer* and *terminer*, and justices of assizes, and justices of peace, or three of them, (1 Qu.) shall have power to inquire, hear and determine the offences aforesaid in their sessions, by information or indictment. *s.* 2.

And if any person shall seize any such deceitful linen cloth, he shall at the next sessions of the peace, or before two justices of peace, (1 Qu.) make information of the offence, and of the seizure of the cloth, or procure the offenders to be indicted; and shall be bound before the justices to the use of the king, in such form as the justices shall think meet to pursue the same matter with effect, and to give evidence, and also to pay the moiety of all that he shall recover to the sheriff or other accountant to the use of the king, and the other moiety to him that shall make information or procure indictments of the premises, and follow the same with effect. *s.* 3.

And the justices before whom the offence shall be tried, shall certify the same by their estreat into the *Exchequer* yearly at *Michaelmas*, as they do other estreats, and the barons of the *Exchequer* shall have power to make process for so much as shall appertain to the crown. *s.* 4.

Penalty on affixing any stamps in imitation of that on Scotch or Irish linens, on foreign.

And by 17 *Geo.* 2. *c.* 30, if any person shall affix or procure to be affixed any stamp, in imitation of the stamp put upon the linens of *Scotland* or *Ireland, on any foreign linens* imported, he shall for every offence, being convicted, forfeit 5*l.* for each piece of linen so stamped; and if any person shall sell, expose to sale, or pack up for sale, any foreign linens, knowing them to be stamped as the manufacture of *Scotland* or *Ireland*, such person being convicted shall forfeit the linens, and 5*l.* for each piece: and in case any person shall affix any counterfeit stamp upon any linens of the manufacture of *Great Britain* or *Ireland*, in order to vend the same as duly stamped, such person being convicted shall forfeit 5*l.* for every piece so stamped: and in case any person shall sell, expose to sale, or pack up for sale, any such linens knowing the same to be so stamped, such person being convicted shall forfeit the linens, and 5*l* for each piece. *s.* 1.

And it shall be lawful for any justice of peace for the county or place where any offence is committed, to convict the party offend-

ing upon the oath of one witness, and to grant a warrant to levy the penalties by distress and sale of the offender's goods; and if no goods can be found, or not sufficient to pay such penalties, any justice of peace shall, upon proof upon oath by the person who has the execution of the warrant for distress, commit the party offending to the gaol of the county where the offence is committed, for six months, unless such penalties be sooner paid: which penalties shall be applied to the use of the informer, first deducting 2*s*. in the pound, to be paid to the constable or officer executing the warrant for levying the penalties. *s.* 2.

How inventions for printing linens are secured to the inventors.

And by 34 *Geo.* 3. *c.* 23, every person who shall invent, design, and print, and become the proprietor of any new and original patterns for printing linens, cottons, calicoes, or muslins, shall have the sole right of printing and reprinting the same for three months, from the day of first publishing thereof, which shall be truly printed with the name of the printer or proprietor at each end of every piece. *s.* 1.

And if any calico-printer, linen-draper, or other person whatsoever, shall print, work, or copy such original pattern, or cause the same to be printed, worked or copied, or shall print or reprint, or cause to be printed or reprinted, any such pattern, and shall publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, or in any other manner disposed of, any linen, cotton, calico, or muslin so printed, without the consent of the proprietor thereof first had in writing, signed by him in the presence of two witnesses, [*or without having purchased the plate or blocks for printing from him*, 27 Geo. 3. c. 38. s. 1.] such proprietor shall by a special action on the case (to be commenced within six months, 27 *Geo.* 3. *c.* 38. *s.* 2.) recover damages, together with costs. s. 1.

## VI. *Pewter and brass.*

Of what goodness pewter and brass ought to be.

By 19 *Hen.* 7. *c.* 6, no person shall cast or work any pewter vessel or brass, but that it be as good fine metal as the pewter and brass wrought in *London*, and as by the statutes of the same ought to be, on pain of forfeiting the same, half to the king, and half to the finder; but this is not to extend to brass or pewter in the possession of any person, other than the worker, or such as have the same to sell, and being of the crafts or mysteries.

Of what assize hollow wares shall be.

And no person shall make any hollow wares of pewter, to wit, salts and pots of pewter called ley metal, but after the assize of pewter, and ley metal within *London*. Ibid.

Makers to set their marks.

And the makers shall mark them with their own mark, that they may avow the same by them wrought; and the same not sufficiently made and wrought, and not marked, found in the possession of the maker or seller, shall be forfeited, and if the same be sold, the maker shall forfeit the value thereof, half to the king and half to the finder or searcher. *Ibid.*

And the master and wardens of the craft of pewterers, and where there are none such, the head and governors of the city or borough, may appoint searchers; and the justices at *Michaelmas* sessions shall appoint two persons, having experience therein, to search within the county: and of all such unlawful pewter or brass as they shall find, half shall be to the king and half to the searchers. *Ibid.* Searching for insufficient wares.

And in default of the master and wardens not searching any person, having sufficient knowledge in the said occupation, by oversight of the mayor, or other head officer of cities or boroughs, may search. *Ibid.*

And no person using the crafts of pewterer and brazier, shall sell or change any pewter or brass at any place but only in open fair or market, or in his own dwelling houses except he be desired by the buyer of such ware, on pain of 10*l.* half to the king, and half to him who shall seize or sue for the same in any competent court, by action, bill, plaint, or information. 19 *Hen.* 7. *c.* 6. 25 *Hen.* 8. *c.* 9. *s.* 6. Selling where.

And persons using the buying and selling of pewter, or brass, who shall occupy any false beams or weights, and every person using the same, shall forfeit 20*s.* half to the king, and half to him that shall sue by action of debt, and also the beams to him that shall seize them. 19 *Hen.* 7. *c.* 6. False weights.

And if the offender be not sufficient to pay the forfeiture, the mayor or other head officer, where he shall be found, shall put him in the stocks, and so keep him till the next market day next adjoining, and in the market-place put him in the pillory all the market time. *Ibid.*

If any untrue metal or workmanship of tin or pewter be found in any wares brought to be sold, the mayor of *London*, and the master and wardens of the pewterers may search the same in the said city; and in all other cities and towns where there are wardens, the mayors and wardens shall have like authority; and where there are no wardens, then the head officers of cities or towns shall appoint searchers; and if such new wares wrought of tin and pewter be found defective, and in the possession of the seller, the person putting them to sale, shall forfeit the same, half to the king, and half to the searcher or finder. 4 *Hen.* 8. *c.* 7. *s.* 7. Offering untrue metal to sale.

And by 25 *Hen.* 8. *c.* 9, no person shall buy, or take by exchange (or otherwise take into, or within this realm, to the intent to sell the same, 33 *Hen.* 8. *c.* 4. *s.* 7.) any wares made out of the realm, of tin, or mixed with tin, as dishes, saucers, flagons, spoons, or any other thing made of tin or pewter; on pain of forfeiting the same, and the value thereof, half to the king and half to the finder. *s.* 1. Importation.

And the master and wardens of the pewterers, and where there are none, the head officer of the town may appoint searchers who may seize the same. *s.* 2.

And by 33 *Hen.* 8. c. 4, persons interrupting or disturbing the said seizure shall forfeit 5*l.* half to the king, and half to him that shall sue. *s.* 8.

Exportation.

And by 33 *Hen.* 8. c. 7, no person shall carry over sea any brass, copper, latten, bell-metal, pan-metal, gun-metal, nor shroff-metal, whether it be clean or mixed (tin and lead only excepted), on pain of forfeiting double the value thereof, and 10*l.* for every thousand weight, (2 & 3) *Ed.* 6. c. 37.) half to the king, and half to him that shall sue. *s.* 2.

## *VII. Sail-Cloth.*

None to make sail-cloth who have not served an apprenticeship.

By 1 *Jac.* 1. c. 24, no person within this realm shall make any cloth for sails, called mildernix and powledavies, but such as shall be apprentices in the trade of making the said cloth seven years; upon pain to forfeit 20*s.* for every month, one moiety to the king, and the other to such as will sue for the same, in any of the king's courts. *s.* 3. 5.

True manufacturing of.

And no persons shall make the said cloths of any other stuff than of good hemp, nor of less length than of 33 yards, nor of less breadth than three quarters; nor shall sell or offer to sell the said cloths, before the stuff be well beaten, scoured, bleached, and the cloth well driven with a brazen or iron shuttle, upon pain to forfeit for every piece 5*s.* to be recovered and applied as aforesaid. *s.* 4, 5.

And by 9 *Geo.* 2. c. 37, (made perpetual by 45 *Geo.* 3. c. 68) all sail-cloth made in *Great Britain* shall be made in manner herein mentioned, *viz.* every piece or bolt of *British* sail-cloth, twenty-four inches in breadth, and thirty-eight yards in length, shall weigh according to the numbers and weights hereafter mentioned. *s.* 6.

| Number | Pounds each bolt. | Number | Pounds each bolt. |
|---|---|---|---|
| Number 1 | 44 | Number 6 | 29 |
| 2 | 41 | 7 | 24 |
| 3 | 38 | 8 | 21 |
| 4 | 35 | 9 | 18 |
| 5 | 32 | 10 | 15 |

And in case any bolt of *British* sail-cloth shall be made of a different breadth or length, such bolt shall be in weight in proportion, and shall be marked with such number as shall be agreeable to the weight; and the warp or chain of the first six numbers shall be wholly of double yarn, and shall contain in every bolt that shall be 24 inches in breadth, 560 double threads, and in every bolt 30 inches in breadth, 700 double threads, and in every bolt of any other breadth, in proportion; and the warp and shoot-yarn in every bolt of the first four numbers shall be of long flax, without any mixture of short or

har flax or of long flax, or *Italian* hemp or *Braack* hemp; and all the flax and hemp that shall be used in making the warp and shoot-yarn of such sail-cloth, of the said four numbers, shall be of a strong staple, good in its kind, and well dressed, and the yarn shall be well cleansed, even spun, and well twisted; and all the shoot-yarn of each bolt of the said four numbers shall be as strong as the warp-yarn, and close struck, with four shoots of treble threads at the distance of every two feet; and both the warp and shoot-yarn shall be as strong as the warp and shoot-yarn that are usually wrought in the said sail-cloth of those four numbers, that are made for his majesty's navy; and no flax-yarn wrought in *British* sail-cloth shall be whitened with lime, on forfeiture of 6*d. per* yard, or be worked up into new sails in *Great Britain*, any ways essentially different, or inferior to the aforesaid directions. *s.* 7.

Manufacturers of *British* made sail-cloth to put their names and abode thereon.

And every maker of sail-cloth shall affix on every piece by him made a stamp, containing the name and place of abode of such maker, in words at length; and if any person shall expose to sale, or work up into sails, any piece of *British* sail-cloth without being stamped, *such person being convicted* upon oath of one witness before *one justice of the peace*, shall forfeit 10*l.* for every piece; and if any person shall wilfully or maliciously cut off or obliterate any stamp so affixed (except in tarring or working up the same) or shall affix any stamp on which shall be the name or place of abode of any other person, such person shall forfeit 5*l.* which shall be levied by distress and sale of goods, *by warrant of two justices of peace*, and shall go to the informer. *s.* 3.

New ships to have a complete set of *British* sails.

And every ship built in *Great Britain*, and every ship built in his majesty's plantations in *America*, shall upon her being first navigated be furnished with one complete set of new sails *bonâ fide* belonging to such ship, made of sail-cloth manufactured in *Great Britain*; and in case such ship shall not be so furnished the master shall forfeit 50*l.* 19 *Geo.* 2. *c.* 27. *s.* 11.

Act to be hung up in workshops.

And every maker shall cause this act, or an abstract thereof, to be put up in some public part of the loft or work-house, where his trade is carried on, under the penalty of 40*s.* 9 *Geo.* 2. *c.* 37. *s.* 8.

Preference to be given by the commissioners of the navy to *British* sail-cloth.

And by 7 and 8 *Will.* 3. *c.* 10, made perpetual by 9 *Ann. c.* 21, so much *English*-made sail-cloth as shall be fit for the service of his majesty's navy, shall have the preference of foreign sail-cloth. And the commissioners of the navy are required to contract for such *English* sail-cloth, and to allow the makers 2*d.* per yard above what they pay for foreign cloth of equal goodness. *s.* 14.

Regulations as to foreign sail-cloth.

By 19 *Geo.* 2. *c.* 27, made perpetual by 45 *Geo.* 3. *c.* 68, Every master of a ship belonging to any subjects, navigated, with, or having any foreign-made sails on board, shall at the time of making his entry at the custom-house, make an entry

upon oath of all such foreign made sails, and before the ship is cleared, pay the duties, on pain of forfeiting all such sails to the king; and also the sum of 50*l.* *s.* 1, 2.

And every such sail shall be stamped as after mentioned at the port of entry. *s.* 2.

But if the master shall after his report declare his intention of not choosing to pay the duty, and shall deliver to the officer of the port such sails, he shall not be subject to the penalty of 50*l.* *s.* 3.

But nothing herein shall charge any captain or master of any ship coming from the *East Indies*, with any of the duties or forfeitures aforesaid, on account of such ship being navigated with or having on board any foreign made sails *bonâ fide* brought from the *East Indies*. *s.* 4.

All foreign-made sail-cloth or canvass, usually entered as *Hollands Duck* or *Vitry canvass*, fit for the making of sails, which shall be imported into *Great Britain* by way of merchandize, and upon the importation whereof any duties are payable, shall be stamped at the time and place of landing. *s.* 5.

Stamps on foreign made sail-cloth.

And the commissioners of the customs shall provide stamps of eight inches diameter each for stamping foreign made sail-cloth, or canvass, and shall cause a proper number of the said stamps to be sent to the officers of customs of every port, who shall stamp any foreign-made sails and foreign-made sail-cloth or canvass imported; and the stamps shall, to make the impression durable, be dipped in a liquor made of *red lead, mixed with linseed oil boiled*; and the stamp therewith made shall express the port of entry. And if any person counterfeit any such stamp, or the impression of the same, upon any foreign-made sail-cloth or canvass, or foreign made sails, or shall sell the same with such counterfeit stamps knowingly, being convicted, he shall forfeit 50*l.* *s.* 6.

And no person in *Great Britain* or *America* shall work up into sails or tarpawlins, any foreign-made sail cloth, or canvass, not stamped according to this act, upon pain that such sails and tarpawlins shall be forfeited; and every person so offending, and *convicted upon the oath of one witness before one justice of peace* for the county or place where the offence is committed, shall forfeit 50*l.* for every sail or tarpawlin by him so made, not being stamped as aforesaid; which penalty shall be levied by distress and sale of the offender's goods by warrant of two justices, and shall go the use of the informer; and for want of such distress, it shall be lawful for such justice or justices, by warrant, to commit such person to the gaol of the county or place where such offence was committed, for six months, or until he pays the penalty. *s.* 7.

And every person who shall make up into sails any foreign-made sail cloth or canvass, shall place the stamps impressed on

such foreign sail-cloth or canvass, in the most conspicuous parts of such sails, *viz.* on the after side of such sails, and in such manner that the number of stamps may appear proportionably to the number of bolts or pieces in the sail; and in case any p son make up any foreign-made sail-cloth or canvass in any other manner, such sails shall be forfeited, and the offender shall for every offence forfeit 10*l.* *s.* 8.

And no person shall alter or mend any sail made of foreign-made sail-cloth or canvass not stamped; and in case any person shall alter or mend any sail not stamped, he shall for every sail so altered or mended forfeit 20*l.* *s.* 9.

Sail-makers to stamp their names and place of abode on every new sail.

Also every sail-maker in *Great Britain* and *America* shall affix on every new sail a stamp of eight inches diameter, containing the name and place of abode of such sail-maker; which stamp, to make the impression durable, shall be dipped in a liquor made with lamp-black mixed with linseed oil boiled; and in case any person shall make any new sail, and deliver the same not stampt with his name and place of abode as aforesaid, every such sail shall be forfeited, and he shall for every sail so delivered not stamped forfeit 10*l.* *s.* 10.

Recovery of the penalties not otherwise directed.

And the penalties in 9 *Geo.* 2 *c.* 37, and 19 *Geo* 2. *c.* 27, (not otherwise directed and applied) shall be recovered by action, bill, plaint, or information, in any court of record, and applied one moiety to the king and the other moiety to the person that shall sue. 9 *Geo.* 2. *c.* 37. *s* 9. 19 *Geo.* 2. *c.* 27. *s.* 12.

But no part of the penalties in 9 *Geo.* 2. *c.* 37, which do not attach to double sail-cloth, shall extend to *British* canvass made with single-thread warps, corded or not corded, and fit for and made into sails, and such single canvass shall be deemed *British* sail-cloth; but the same shall be made of equally good materials, and be conformable in weights, and all other things, to the restrictions on double-thread sail-cloth. 33 *Geo.* 3. *c.* 49. *s.* 2, 3.

## *VIII. Silk.*

Silkthrowers to serve an apprenticeship.

By 13 & 14 *Car.* 2. *c.* 15, no person shall use the art or mystery of a silk-thrower, unless such as shall be apprentices to the said trade, or shall have served seven years apprenticeship thereunto, upon pain that every person offending shall forfeit 40*s.* for every month he shall use the trade, one moiety to his majesty, and the other moiety to such as shall sue for the same in any court of record, or before any justices of oyer and terminer, or the justices of peace at their quarter sessions by action, bill, plaint, or information. *s.* 2.

For the penalties for importing foreign alamodes and lustrings —ribbands, laces or girdles—stockings, mitts or gloves—see title SMUGGLING, div. ii. sec. 1.

### IX. *Stockings and frame-work knitted pieces.*

Goods to be marked by manufacturers.

By 6 *Geo.* 3. *c.* 29, all frame-work knitted pieces, and stockings made of thread, cotton, worsted or yarn, or any mixture of all or any of the said materials, or of any materials of any other kind (except such as shall be made of silk only) which shall contain three or more threads, shall be marked with the same number of eyelet holes as there are threads, and such stockings and eyelet holes shall be made in a distinct manner in one direct line, or in the same course, and shall not exceed three inches from the extreme eyelet holes, and no such eyelet holes shall be placed within four inches of any letter, figure, mark, or other device, woven in such goods: and all such eyelet holes shall be made within four inches of the top or end of every such piece or pair of such goods or manufactures; and no eyelet hole, or imitation thereof, shal be made except as aforesaid. *s.* 1.

But nothing herein shall prevent manufacturers from using remnants, or materials of any sort in the welts and tops of stockings only, not exceeding three inches, although the same shall not contain so great a number of threads as the legs of such stockings. *s.* 2.

Penalty on not marking.

And if any master frame-work knitter, or hosier, or any other person shall make or cause to be made any frame-work knitted goods or manufactures (except such as shall be made of silk only) without being duly marked, he shall forfeit 5*l.* for every piece of such frame-work knitted goods, or pair of stockings, and also all such pieces and stockings. *s.* 3.

But this penalty of 5*l.* shall not extend to any journeyman, apprentice, servant or person not making such goods o his own account. *s.* 4.

Nevertheless if any journeyman, apprentice, servant, or othe person employed in making any frame-work knitted manufa tures, shall not duly mark every piece and pair as aforesaid, h shall forfeit not exceeding 40*s.* nor less than 5*s.* for each piece frame-work knitted goods, or pair of stockings, which he sh make and not mark, unless he shall make it appear, to t satisfaction of the justice that the same were by him undu marked by direction of his master; in which case he shall b exempted from any penalty. *s.* 5, 6.

Penalties on selling unmarked goods.

And if any person shall sell, or expose to sale, any frame-wo knitted piece, or pair of stockings, of the aforesaid materi or any mixture thereof (except silk) which shall not be dul marked, he shall forfeit 5*l.* for every piece, and for every pai and also the pieces and stockings. *s.* 7.

But if any person prosecuted for selling, or exposing to sale manufactures not duly marked, shall discover the seller ther of, so as such seller shall be convicted, and become liable t the penalties, then the person prosecuted for selling or exposin

such manufactures shall be discharged from any penalty by this ct. *s.* 8.

And it shall be lawful for one justice, not being a frame-work nitter, hosier, or a proprietor of frames, to convict the party ffending, upon the oath of one witness, and upon such conviction, in case such penalties shall not be forthwith paid, to issue a warrant to levy the same by distress and sale of the offender's goods; and in case no goods can be found, or there shall not be sufficient to pay such penalties, such justice shall upon proof thereof upon oath, by the person who shall have the execution of such warrant, commit the party offending to the common gaol of the county, or place, where the offence shall be committed, there to remain for not exceeding three months, unless such penalties shall be sooner paid; and all penalties shall go one moiety to the informer, and the other to the poor of the parish. . 9. Recovery of penalties.

But any person aggrieved may appeal to the justices at any general quarter sessions, giving two days notice in writing of such appeal, to the justice before whom he shall have been convicted, and within two days after such notice, entering into a recognizance before some justice with two sureties, to try such appeal at such quarter sessions; and the said justices, at the said sessions, upon due proof of such notice and recognizance, shall nally determine such appeal in a summary way, and award costs s they shall think proper, and the determination of such quarter essions shall be conclusive. *s.* 10.

## X. *Thread.*

By 28 *Geo.* 3. c. 17, the reel used in reeling or making up *nce* or *nuns thread* shall be one yard, or thirty-six inches in cumference; and such person who shall use, in reeling or king up ounce or nun's thread, any less reels, and shall be victed thereof, shall forfeit the reels used, which shall be bro-, burnt, or destroyed, and shall also pay for such offence, he person who shall inform, 5*l.* *s.* 1. Size of reels of ounce or nun's thread.

nd all ounce or nun's thread manufactured in *Great tain* shall be made up in hanks, ounces, quarters, and nds avoirdupois, each hank containing thirty threads or nds of the said reel, of the same quality and fineness; and h ounce containing a particular number of such hanks en-, of the same quality and fineness, and no fractions or broken ts of a hank; and each quarter containing four such ounces, he same quality and fineness; and each pound containing four h quarters, of the same quality and fineness; and the cover of h pound or smaller package of such thread shall be marked n a stamp, ascertaining the contents of such package to be ce thread, and specifying the number of hanks in each ounce, l expressing the manufacturer's name and abode. *s.* 2. How such thread is to be made up.

And no person whatsoever shall reel or make up any such thread in any other manner than as aforesaid—or sell or expose to sale, any ounce thread manufactured in *Great Britain* but such as is reeled, made up, and stamped, in manner aforesaid;—and such person who shall reel or make up such thread in another manner, or who shall sell, or expose to sale, such thread so reeled or made up in another manner, knowing the same to be improperly reeled, shall forfeit to the person who shall inform, the thread, and 10*l.* for each pound. *s.* 2.

Also persons who shall imitate or counterfeit the mark or stamp used by any manufacturer, to make the thread therewith stamped pass for the manufacture of the person whose stamp is counterfeited, or who shall mark any thread with a stamp so counterfeited, or who shall sell or expose to sale any thread so marked with a counterfeit stamp, knowingly, shall forfeit all such stamps, to be broken and destroyed, and also to the person whose stamp is counterfeited the thread so stamped and the sum of 10*l.* *s.* 3.

Recovery of penalties.

Two justices may hear and determine all offences against this act; and they are, on information or complaint in writing, to summon the party accused, and also the witnesses on either side, and to examine into the matter, and upon proof made thereof, either by the voluntary confession, *or by the examination of the party accused**, or by the oath of two witnesses, to give judgment for the forfeitures and penalties, and to issue their warrant for carrying such sentences into execution, and for levying the penalties by distress and sale (if not redeemed within ten days) of the offender's goods, rendering the overplus if any, after deducting the charges of distress and sale, to the owner; and in case goods cannot be found sufficient for payment of the penalties, then to commit the offender to gaol for three months, unless such penalties be sooner paid. *s.* 4.

Appeal.

But any person aggrieved by the judgment of such justices may, upon giving security *to make good the sentence*†, and to pay such costs as shall be ordered in case such judgment shall be affirmed, appeal to the next general quarter sessions, who are to summon and examine witnesses upon oath, and finally to determine the same; and in case the judgment shall be affirmed, such justices may order the appellant to pay the costs occasioned by such appeal. *s.* 4.

Mitigation of penalties.

And the said justices, and also the sessions, may mitigate the penalties, but not below one half, and the full costs of prosecution. *s.* 5.

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* This seems to be contrary to the general rule *that no man ought to accuse himself.*

† This is an absurdity, for no man would appeal from a sentence in order to establish it.

If any person summoned as a witness before such justices, either on the part of the prosecutor, or the person accused, shall not appear at the time and place appointed, without a reasonable excuse, to be allowed by such justices, such person *shall forfeit to the prosecutor** 5*l.* to be levied as other penalties, besides being liable to be compelled to appear and give evidence by another summons, under the like penalty. *s.* 6. Witnesses not appearing.

When any thread shall be seized in pursuance of this act, and it shall be alleged to be foreign manufacture, the *onus probandi* shall lie upon the owner of such thread; and if he fail in such proof, the thread seized shall be forfeited, and the owner liable to the penalty. *s.* 7. Proof of the thread being foreign to lie on the owner.

## XI. *Woollen manufactures.*

By 11 *Ed.* 3. c. 5, the cloth-workers of strange lands which will come into *England*, *Ireland*, *Wales*, and *Scotland*, within the king's power, shall come safely, and shall be in the king's protection and safe conduct, and the king will grant them franchises. Encouragement for foreign clothiers to come into the realm.

And by 4 *Jac.* 1. c. 2, it shall be lawful for every clothier of what town or county soever, where clothing had been used, to make any true woollen cloth, of what name or making soever, albeit the same do bear the name of some other county or town. *s.* 25. Clothiers of any county may make cloth of any kind.

But by 5 *Eliz. c.* 4, every person that shall have three apprentices in the occupation of a cloth-maker, fuller, sheerman or weaver, shall retain and keep one journeyman, and for every other apprentice above three one other journeyman, upon pain of 10*l.* to be recovered and applied as the penalty for exercising a trade not having served an apprenticeship.† *s.* 33. 39. Journeymen to be kept in proportion to apprentices.

*And to support, regulate, and encourage the woollen manufacture several acts of parliament have from time to time been made; all of which so far as they vest powers in justices of peace, will be considered in the following order.—1. As to the winding of wool.—2. As to the true working of woollen cloth.—3. As to the dying of wool and woollen cloth.—4. As to the tenters.—5. As to the dressing of cloth.—6. As to the payment of the wages of workmen employed in the woollen manufacture.—7. As to the measuring of mixt or medley broad cloth.—8. As to Yorkshire cloths in particular.—9. As to the importation or exportation of woollen cloth.*

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* Here is also another mark of inconsistency; for the prosecutor is to have the benefit of the penalty for the non-attendance of the witnesses, even though the default is in the witnesses of the party accused.

† For this see vol. i. p. 173, 174.

Frauds in winding of wool.

1. *As to the winding of wool.*] By 8 *Hen.* 6. c. 22, no man shall make within the fleece at the winding of his wools, nor put in the same, locks, peltwood, tar, sand, earth, glass, nor dirt; and if any do, he that is grieved shall have his action of trespass and deceit.

And by 23 *Hen.* 8. c. 17, made perpetual by 13 *Eliz.* c 25, no person shall wind any fleece of wool not sufficiently washed, nor wind within any fleece, clay, lead, stones, sand, tails, deceitful locks, cot call, combre, lambs wool, or any other things whereby the fleece may be more weighty, to the deceit of the buyer, upon pain to forfeit for every fleece sixpence, one half to the king, and the other half to him that shall sue. *s.* 1.

Penalty thereon.

*But the said penalty being but small, and the recovery thereof attended with great expense, it is enacted by* 28 *Geo.* 3. c. 38, that every person offending against 23 *Hen.* 8. c. 17, and 13 *Eliz.* c. 25, shall, in lieu of every sixpence which by the said acts might be recovered, forfeit 2*s.* the whole whereof shall be paid to the finder or prover of the deceits; and the offences against the said acts shall be heard and determined by one justice in a summary way, and such justice shall cause the person against whom any information shall be laid, to be summoned at a certain time and place, to be fixed by such justice, and he is upon the appearance or default of such person to examine into and give judgment in the premises. *s.* 79.

Exceptions.

But the act 23 *Hen.* 8, shall not extend to any shire, the inhabitants whereof have not used to river or wash their sheep before they be shorn, nor shall it be hurtful to any persons that have usen to sell their wool by tale, and not by weight. 23 *Hen.* 8. c. 17. *s.* 2.

And by the above act 28 *Geo.* 3. c. 38, if it shall appear to the satisfaction of such justice, that the matter complained of was not done with intent to deceive the buyer of such wool, or that any clay, sand, or earth, found in such fleece, was not intentionally put there to make the fleece more weighty, but became mixed or connected with the same by reason of the necessary pasturing, folding, or keeping of the sheep, whereon such fleece shall have been grown, subsequent to the rivering or washing of such sheep, such justice is empowered to discharge such complaint, and acquit the person accused from the payment of any penalty on account of the matter therein alleged. *s.* 80.

And in case the penalty hereby inflicted for false winding of wool, or selling thereof, shall not be paid within six days after conviction, the penalties shall be levied by distress and sale of the goods of such offender by warrant of the justice. *s.* 81.

Exoneration of seller.

Also it shall be lawful for the seller of wool, touching which any complaint or information shall have been made, and which shall be then pending, immediately after he shall have received such summons as aforesaid to apply to the justice, and require

him, upon information having been given for that purpose, to summon the person who actually wound or folded the wool complained of as being falsely wound or folded, to appear at the time and place mentioned in such original summons, or at such other time and place as such justice shall think proper (of which notice shall be given by the seller to the person complaining), when the said justice shall, whether the person charged as the actual winder of the wool complained of shall appear or not (proof being made that he had been summoned), hear and determine the complaint; and if it shall then appear, to the satisfaction of the said justice, that the wool complained of had been actually wound or folded falsely by the person charged by the seller, and that without the privity or consent of such seller, then the person who actually wound or folded such wool (and not the seller) shall be subject to the penalties imposed upon the seller of wool deceitfully wound or folded; and such remedies for the recovery of the same as are before mentioned: but if it shall upon hearing appear otherwise to such justice, or if it shall appear and be determined otherwise upon hearing of the appeal which is hereinafter given, then the seller shall remain subject to such penalties and remedies; and in case of non-payment of such penalties by, or that the same cannot be recovered from, the person convicted, such person shall be committed to the common gaol, or house of correction, for not exceeding three calendar months, nor less than twenty-one days, unless the penalty and costs (if any) shall be sooner paid. *s.* 82.

But any person aggrieved by the judgment or determination of such justice, may appeal to the next general or quarter sessions, giving, within five days next after conviction, notice in writing to the respondent in such appeal; and he shall at the time of making such appeal, with two sureties, enter into recognizance before the said justice, to appear and prosecute such appeal at the said sessions, and abide by the order or determination of the court, and to pay the costs and charges thereby awarded against such person (if any); and such appeal shall, by the said sessions, be examined, and the circumstances of the case fully inquired into, and the matter heard and determined; and the said sessions are to award costs to be paid by either party. *s.* 83. Appeal.

But no conviction shall be set aside in any court for want of form, or for misstating any fact, provided the material facts alleged in such conviction, and upon which the same shall be grounded, be proved to the satisfaction of the court. *s.* 48.

The justices at their general quarter sessions, or any adjournment thereof, are empowered to administer to every person desirous of becoming a sworn winder of wool, and who shall produce a certificate under the hands of two growers of wool, testifying to the satisfaction of such justices that such person is properly qualified to become a sworn winder of wool, an oath to the following purport: Winders of wool may be sworn at sessions.

*I A B do swear, That I will truly and justly, without deceit, wind and fold all and singular the wool which I shall take upon me to wind and fold, without leaving or putting any clay, lead, stones, sand, tails, deceitful locks, lambs wool, or any other thing whereby the fleece may be made more weighty, to the deceit and loss of the buyer; and that I will not use any other deceit, craft, guile, or fraud, in the winding or folding of any such aforesaid wool.*

*So help me GOD.*

An entry of the administering and taking of which oath shall be made in the records of the sessions, and a certificate thereof shall be delivered by the clerk of the peace to the person who shall have taken the same. *s.* 85.

But persons unsworn may be employed.

Provided that nothing herein shall prevent any one from employing any person in winding or folding of wool, although such person shall not have been sworn. *s.* 86.

To be of one sort of workmanship.

2. *As to the true working of woollen cloth.*] All cloths and demy cloths shall follow one order of workmanship from one end to the other. 4 *Ed.* 4. *c.* 1. *s.* 5.

No deceivable thing to be put in cloth.

And by 43 *Eliz. c.* 10, no person shall put any hair, flocks, thrums or yarn of lamb's wool, or other deceivable thing, in any woollen cloth, upon pain to forfeit every such cloth, and upon pain that every person which shall buy, gather or procure any such deceivable thing for that intent, do forfeit the same, one moiety to the searchers and overseers that shall find the same, and in their default to him that shall find the same, and the other half to the poor of the parish. *s.* 1. 12.

But this penalty is mitigated so far as it concerns *broad cloth*; for by 21 *Jac.* 1. *c.* 18, no person shall put any flocks, noiles, thrums, hair, or other deceivable thing, into any broad woollen cloth, *upon pain to forfeit* 5*l. and no more*, for every such cloth, to the use of the poor of the parish where such cloth shall be made. *s.* 3.

And in order to discover offenders, it shall be lawful for any overseer or searcher of cloth to enter into any houses, shops, mills, or rooms, of any persons suspected to have made deceivable cloth, to search all their cloths, and the mixture of their wools; and it shall be lawful for any two justices of peace, upon information or suspicion of any such offence, to grant their warrant to call before them any pesons that shall be thought fit to discover such offence, and to examine upon oath, such persons; and if it shall be found by testimony of two witnesses, or by confession of the party, that any such offences have been committed, the party shall remain convicted: and it shall be lawful for the two justices to certify such offence unto the churchwardens and overseers of the poor of the parish where such deceivable cloth shall be made. *s.* 4.

And after such certificate delivered, and warrant made to the

said overseers and churchwardens, for the levying of the forfeiture, it shall be lawful to levy the sum forfeited by distress and sale of goods; and in defect of distress, it shall be lawful for the two justices to commit the party to the common gaol until payment of the sum forfeited. *s.* 5.

Ends of yarn not to be used.

Also by 13 *Geo.* 1. *c.* 23, no clothier or maker of woollen cloth, druggets, or other woollen goods, or goods mixed with wool, shall use any end of yarn, wefts, or other refuse of cloths (flocks and pinions only excepted) by working the same up again into any goods, on the penalty of 5*l.* to be recovered by prosecution before two justices upon information given on oath, within three calendar months after the offence; and the justices are empowered to hear and determine the same, and on conviction to issue their warrants to levy the penalties by distress and sale of goods; one moiety to the informer, and the other to the poor of the parish: and for want of distress, to commit the offender to the county gaol for any time not exceeding three months, or until satisfaction be made. *s.* 4.

But persons aggrieved may appeal to the next sessions, giving six days notice in writing; who may order costs and damages, and levy the same, by their order or warrant by distress and sale; and for want of distress, may commit the party to the county gaol, or to the house of correction, for not exceeding three calendar months, or until satisfaction shall be made; and such order of sessions shall be final; nor shall the proceeding of any justices be removed by certiorari. *s.* 6.

And if any *end gatherers* shall be found buying or carrying ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, drugget, or other woollen goods, or goods, mixed with wool (flocks and pinions only excepted), it shall be lawful for any constable or peace officer, by warrant of one justice, to search such person and his bags; and if he find any such ends, he shall carry such person before any justice; which person upon conviction of any of the said offences, on the oath of one witness, or by confession, shall be deemed a dangerous and incorrigible rogue, and shall be punished as such. 13 *Geo.* 1. *c.* 23. *s.* 8. 17 *Geo.* 2. *c.* 5. *s.* 4.

Fulling of cloth.

By 4 *Ed.* 4. *c.* 1, every fuller, in fulling, rowling or taseling of cloth, shall exercise tasels and no cards; upon pain to yield to the party grieved double damages.

And every justice of peace out of cities and towns where any mayor, master, warden or bailiffs be, and every mayor where there is no master, and every master where there is no mayor, and every bailiff where there is no mayor nor master, and every portreeve where no mayor, master or bailiff is, and every constable of hundred, and every steward keeping wapentake or leet out of city or borough, shall have power to hear and determine the complaints of every such cloth-maker and labourer, by examination of parties, and to commit the offenders to the next gaol within the county till the duties, forfeitures and

damages be paid. And the said justice of peace, mayor, master, warden, bailiff, portreeve, and steward, upon information of any other person which is not grieved, shall have power within his jurisdiction to cause the party to come before him, and to examine them. And if the party by examination or due proof be found guilty, he shall forfeit to the king or to such persons which be entitled to have fines or amercements, 3*s.* 4*d.* And the justices of peace, and other officers, shall have power to make like process against the party, to cause him to appear to be examined, as justices of peace have upon information made for surety of peace, without any fee to be taken. 4 *Ed.* 4. *c.* 1. *s.* 6.

And no cloth not fulled shall be exported, on pain of forfeiting the same, half to the king and half to him that will sue. 7 *Ed.* 4. *c.*3.

Length, breadth, and weight of cloth.

The statutes direct, that in the measuring of woollen cloth, the yard shall consist of 36 inches and the breadth of a man's thumb besides, or 37 inches in the whole. 4 *Ed.* 4. *c.* 1. *s.* 1. 1 *Ric.* 3. *c.* 8. *s.* 2. 6 *Hen.* 8. *c.* 9. *s.* 9. 3 & 4 *Ed.* 6. *c.* 2. *s.* 8. 4 *Jac.* 1. *c.* 2.

And by 4 *Jac.* 1. *c.* 2, the several sorts of cloth shall contain in length and in breadth within the list at the water, being thoroughly wet, and in weight being well scoured, thickod, milled and fully dried, as undermentioned:

| | Yards. long. | Qrs. broad. | lbs. wt. |
|---|---|---|---|
| *Long broad cloth*, made of dyed wools and mingled colours, within *Kent*, *Yorkshire*, or at *Reading*, or of like making, between - - | 30 & 34 | 6¼ | 86 |
| Every white cloth made within the cities of *Worcester*, *Coventry* and *Hereford*, called *Long Worcesters*, or of like making, | 30 & 33 | 7 | 78 |
| All *long coloured cloths*, called plunkets, azures and blues, and long white cloths made in *Suffolk*, *Norfolk* and *Essex*, or elsewhere, of like making, - - - - | 29 & 32 | 6¼ | 80 |
| And all short cloths coloured, and short white cloths called *sorting cloths*, made in any of the last mentioned shires, or of like sort, - | 23 & 26 | 6 | 64 |
| All short cloths coloured, and short white cloths called *fine short Suffolks*, made in the same shires, or of like sort, | 23 & 26 | 6 | 64 |
| *And every sorting cloth shall be differenced from the fine cloths, by a blue selvedge on both lists.* | | | |
| And every white cloth made within the same shires, or of like making, called *handy warps*, . - | 29 & 32 | 7 | 76 |

| | Yards long. | Qrs. broad. | lbs. wt. |
|---|---|---|---|
| And all *broad plunkets, azures, blues, and other coloured cloth*, made in *Wiltshire* or *Somersetshire*, or of like making, - - - | 26 & 28 | 6½ | 68 |
| And *short cloths* made of dyed wools and mingled colours, in the county of *York*, or of like making, - - | 23 & 25 | 6½ | 66 |
| *And every half piece of the same, called dozens, to be made after the same rate,* | | | |
| All *broad listed whites and reds* made in *Wiltshire, Gloucestershire, Oxfordshire*, and the eastern limits of *Somersetshire*, or of like making, called *sorting pack broad listed cloths*, - | 26 & 28 | 6½ | 64 |
| All narrow listed *whites*, made as last mentioned, called sorting pack cloths, - | 26 & 28 | 6½ | 61 |
| All narrow listed *reds*, made as last mentioned, and called sorting pack cloths, - - - | 26 & 28 | 6½ | 60 |
| Every fine cloth with plain lists made in *Wiltshire, Gloucestershire, Somersetshire*, and *Oxford*, or of like making, - - - | 29 & 32 | 6½ | 72 |
| All cloths having stop lists, - | 30 & 33 | 7 | 78 |
| Every broad cloth, called *Tauntons, Bridgewaters*, and *Dunsters*, made in the western parts of *Somersetshire*, or of like making, - - | 12 & 13 | 7 | 30 |
| And every narrow cloth of like sort, - - - - | 24 & 25 | 4 | 30 |
| *And the half cloth to be of a proportionable length, breadth and weight.* | | | |
| All *Devonshire* kerseys, called dozens, - - - - | 12 & 13 | — | 13 |
| All check kerseys, straits and plain greys, - - - - | 17 & 18 | 4 | 24 |
| All ordinary penistones, or forest whites, - - - - | 12 & 13 | 5½ | 28 |
| Sorting penistones, - - | 13 & 14 | 6½ | 35 |
| All kerseys called washers or wash whites, made in the counties of *York, Lancaster*, or elsewhere, of like making, being half thicked, - - | 17 & 18 | — | 17 |
| And being quarter thicked, - | 18 & 19 | — | 17 |

But where flannels, wadualls, and coverlets or blankets, are usually made, the same may be made as heretofore. 4 *Jac.* 1. c. 2. s. 16.

*And all cogware, Kendals, coarse cottons, and Carptmeales, made in* Cumberland *and* Westmorland, *or within the towns and parishes of* Carptmeale, Hawkshead, *and* Broughton, *in the county of* Lancaster, *whereof the dozen shall not exceed the price of* 13*s.* 4*d. shall be made as may please the buyer, and shall not be searched or sealed.* 7 *Jac.* 1. c. 16. *s.* 2.

*And no person shall incur any penalty for want of length, breadth or weight of Welch cottons, under the price of* 1[illegible]*d. the yard, or* 2*s. the good, so as they be not mixed with hair, or other deceitful stuff; nor for any others above that price, except they be mixed as aforesaid, or shall shrink above half a yard in twelve yards, or weigh less than fourteen ounces the yard, or hold not full three quarters of a yard broad.* 1 *Jac.* 1. c. 25. *s.* 28. 21 *Jac.* 1. c. 28. *s.* 5.

*And no penalty shall be for want of a seal on Welch cottons; and they shall not be searched or tried but by the buyer.* 3 *Jac.* 1. c. 17.

An ordinary kersey shall not exceed 24 yards in length, and shall weigh one pound and three ounces a yard: sorting kersey shall not exceed 24 yards in length, and shall weigh one pound and three ounces and an half for every yard, on pain of 5s. for every yard above, and 2s. for every pound wanting. 3 *Jac.* 1. *c.* 15.

Also by 8 *Eliz. c.* 12, frizes and rugs shall be betwixt 35 and 37 yards long, three quarters of a yard within a nail broad, and 44 pounds weight, (on pain of 20*s.* for offending in length or breadth, by 5 and 6 *Ed.* 6. c. 6. *s.* 25. and for every pound wanting above four pounds 5*s.* by 4 & 5 *Phil.* and *Mar.* c. 5. *s.* 15.

Allowance in weight.

And for the drying, dressing, rowing and shearing of white and coloured cloths, there shall be an allowance in the weight, viz. for every such broad woollen cloth, four pounds in weight; and the long cloths five pounds, and after that rate in every half woollen cloth, kersey and other woollen cloth. 4 *Jac.* 1. *c.* 2. *s.* 13.

Manufacturers to weave their marks in cloth.

Every clothier shall weave his mark in every cloth, kersey, and other cloths made to be sold. 27 *Hen.* 8. *c.* 12. *s.* 1.

And put their seals to cloth.

And every person which shall make any cloths, shall, before the same be offered to be sold, set his seal of lead unto every of the same cloths, in which seal shall be contained the length and weight of every such cloth, as it shall be found by due proof, by water or weight. 39 *Eliz. c.* 20. *s.* 3.

Overseers of cloth to be appointed in every parish.

And in every parish, village, or hamlet, where any woollen broad cloths, half cloths, kerseys, cottons, dozens, penistones, frizes, rugs, or any other woollen cloth of what nature, kind, or name soever they be, shall be made or sold, the justices of peace, or two of them, and in every city or town corporate, the head officers of the same, together with some one or two of

the justices of the shire next adjoining, shall have power once every year, and as often as they shall think good, to call before them two, four, six or eight, or more of the most honest and able men of every such city, village, hamlet, or parish, where any cloth shall be made or sold, and them shall constitute overseers for one year, or six months, or shorter time, and shall take them sworn and bound in recognizance of 40*l*. a piece to her majesty, to do their best endeavour to see the statutes observed within the limits of their charge. 39 *Eliz.* c. 20. s. 4. 43 *Eliz.* c. 10. s. 7.

And if any of the persons commanded to appear to be made overseers, and having no reasonable excuse, refuse to come and take upon them to be overseers, every such person shall (on conviction at the sessions, by presentment, bill or information, and proof by two witnesses, s. 10.) forfeit for every refusing 5*l*. the one half to her majesty, and the other half to the justice of peace or other head officer; and the overseer so offending, to remain in ward of the sheriff or other head officer, until he hath made payment, or put in bond for the same. 39 *Eliz.* c. 20. s. 5.

Overseers to search.

And the same overseers, or two of them, shall once every month, or so often as they shall think fit, visit all houses, shops or rooms of any clothiers, drapers, cloth-workers, or other persons, where any of the said cloth shall be, and there make search and view the same, and try, as well by weight, water or other way, the said cloths. 39 *Eliz.* c. 20. s. 4.

And if any cloths shall be found not sealed with a seal, containing the length and weight, then the clothier and owner of the cloth shall forfeit the same, and the overseers shall seize and carry away the same, and present the same to the justices of peace at the next quarter sessions. 39 *Eliz.* c. 20. s. 4.

Overseers to present false seals.

And if the overseers shall find any false seal set upon any cloth, they shall present the same unto the justices at the next quarter sessions, and the names of the owners or possessors of such cloth. 39 *Eliz.* c. 20. s. 5.

Penalty on hindering them.

And if any person shall deny or withhold any cloth from the overseers, or will not suffer them to enter into the houses or other places where such cloths shall be, such persons shall (on a like conviction at sessions, s. 10.) for the first offence forfeit 10*l*. and for the second offence 20*l*. and for the third offence, being thereof convicted by verdict and two witnesses, shall stand upon the pillory in the next market town; the said forfeitures to be one third to the overseers, one third to the king, and one third to the poor, as the sessions holden next after judgment shall appoint. s. 5. 9.

Overseers' seals.

And the said overseers shall fix unto every kind of the cloths aforesaid, a seal of lead, containing the length and weight of every such cloths, together with this word, SEARCHED. s. 6.

And every overseer shall upon the penalty of their recognizance, engrave upon their seals their christian and surname; and no cloths, sealed with any seal which shall want such engraving, shall be allowed sufficiently sealed. 21 *Jac.* 1. *c.* 18. *s.* 11.

Also the overseers and searchers so authorized to search and weigh cloth, shall certify the same by their seals affixed to such cloths, and with the word FAULTY thereon stamped, if there be cause. 21 *Jac.* 1. *c.* 11. *s.* 7.

And none of the said cloths, being formerly searched, weighed, and sealed by the overseers and searchers of the parish or place where made, shall afterwards be searched or weighed by any other officer; upon pain of forfeiture of 5*l.* to the party grieved, who may sue for the same at the quarter sessions for the county or town corporate wherein such offence shall be committed. *Ibid.*

And if any persons, but such as are appointed by the acts, or their servants or deputies, do counterfeit, set to, or take away from any the said cloths any of the seals so to be fixed, every person so offending shall (on a like conviction at sessions, *s.* 10.) for the first offence forfeit 10*l* (one third to the overseers, one third to the king, and one third to the poor, as the sessions holden next after judgment shall appoint, *s.* 9); and for the second offence, being convicted by verdict and two witnesses, stand upon the pillory, and forfeit to her majesty 20*l.* 39 *Eliz.* *c.* 20. *s.* 7.

Penalty on cloth *exceeding* the length appointed.

If any of the said cloths, made to be sold, shall be more in length than is appointed, every person selling the same shall forfeit, for every yard and inch exceeding the length appointed, 10*s.* and no more. 4 *Jac.* 1. *c.* 2. *s.* 17.

Or being deficient in weight,

And if any such cloth shall not weigh proportionably to the weight appointed, the person selling the same shall forfeit for every pound weight that shall be wanting above two pounds, 10*s.* and no more. *s.* 18.

And if any person shall blow, spout, wet, or bedew with any liquid, any cloth or kersey for increase of weight, to deceive the buyers or searchers, such person shall forfeit 40*s.* half to the king and half to the overseers certifying the same, or, on their not certifying, to the buyer, and no other, who shall sue in any court of record at *Westminster*. *s.* 12. 22, 23.

Or breadth,

Also if any such cloth, not exceeding the lengths limited, and holding the weight, do want of the breadth, the person selling the same shall forfeit for every cloth falling narrow through the whole cloth, 20*s.* and throughout half the cloth 10*s.* and under half the cloth, 5*s.* only. *s.* 19.

Or length.

And if any cloths shall upon trial, (within convenient time after sale, in presence of the party that sold the same, or if he will not be present, having reasonable notice

thereof in his absence, be found of less length than the seals fixed purport, the owner, or person selling the same, shall forfeit to the person that shall have bought the same, for so much as shall be wanting of the length specified in the seal 6*s*. 8*d*. for every yard, over and besides the value of so much cloth as shall be found wanting. *s*. 20.

And by 21 *Jac*. 1. *c*. 18, all penalties or want of length, breadth, and weight of cloth, shall be distributed into three parts, whereof one third shall be to the overseers and searchers finding the default, to be recovered by them, at the general quarter sessions, by action of debt, bill, plaint or information, and the other parts shall be to the poor of the parish where the cloth shall be made, to be levied by distress and sale of the goods, by the churchwardens and overseers of the poor of such parish. *s*. 12. Recovery and distribution of forfeitures, for want of length, breadth, and weight.

3. *As to the dyeing of wool and woollen cloth.*] By 3 and 4 *Ed*. 6. *c*. 2, no persons occupying the feat of dyeing shall dye or alter into colours any woollen cloths, as brown, blue, pewkes, tawnies, or violets, except the same cloths be perfectly boiled, grained, or maddered upon the woad, and shot with good cork or orchel, according to the ancient workmanship, upon pain to forfeit 20*s*. *s*. 4. Dyeing.

Nor shall any person dye any wool, to be converted into cloth called russets, musters, marbles, grays, roys, and such like colours, or to be made into hats or caps, unless the same wool be perfectly woaded, boiled and maddered: upon pain of forfeiture for the false dyeing of every such cloth, or of as much wool as shall serve for the making of every cloth, 40*s*.; nor shall dye with brasil to make a false colour in cloth nor wool, hats nor caps, upon pain to forfeit 20*s*. *s*. 5.

The said forfeitures to be half to the king, and half to the overseer who shall discover and sue in any court of record, or before the justices of peace; and if the overseer will not sue in half a year, then the said moiety to any other person who will sue in another half year. *s*. 10, 11.

And by 5 and 6 *Ed*. 6. *c*. 6, it shall not be lawful to boil any wools to be converted into broad cloth or kerseys, with galls, rinds, barks of trees, or saw dust, upon pain to forfeit all such wool or the value thereof, half to the king, and half to him that shall sue. *s*. 53. 51.

*But the dyeing of woollen goods* for mather blacks *is particularly regulated by a modern act, viz*. 23 Geo. 3. *c*. 15. *which act is fully abstracted under the title* DYERS, in vol. i.

4. *As to the tenters.*] By 43 *Eliz*. *c*. 10, no person shall have any tenter, instrument, engine, or other device, with any lower bar, pin, ring or other device, wherewith any rough and Tenters.

unwrought woollen cloth, of what nature, kind or name soever they be, may be stretched or strained in breadth, or shall have any wrinch, ringhead, growm, rope or other engine, to stretch or strain any rough and unwrought woollen cloth, in length, made to be sold; upon pain that every offender shall forfeit 20*l.* the one half to the queen, and other half to him that will sue. *s.* 2.

Stretching. And no person shall set any wrought woollen cloth soever made for sale, upon any tenter, instrument, engine or device, to stretch or strain the same, otherwise than the whole wrought woollen broad cloth one yard in length, and one half quarter in breadth: and the half cloth one half yard in length, and one half quarter in breadth; and the kersey, cotton, dozen, penistone, frize and rug, one half yard in length, and one nail in breadth; nor shall utter any wrought woollen cloth, &c. tentered, strained or stretched, otherwise than aforesaid; upon pain to forfeit every such wrought woollen cloth, half to the overseer or informer, and half to the poor. *s.* 3.

*It is to be observed, that it is felony without benefit of clergy to steal any cloth or other woollen manufactures from the rack or tenter, in the night-time, by* 22 Car. 2. c. 5. s. 3.

*And the* 15 Geo. 2. c. 27, *authorises any justice of peace to grant a warrant to search the houses of persons suspected to have any such stolen goods in their possession, and to proceed in a summary way, and otherwise against the offenders; both which acts are inserted at length under the title* FELONY without clergy *.

Dressing of cloth. 5. *As to the dressing of cloth.*] By 3 and 4 *Ed.* 6. *c.* 2, no person shall put any flocks, chalk, flour, or starch, or other deceivable thing, upon any set cloth or other cloth, upon pain to forfeit 40*s.* *s.* 6.

Nor shall any person occupy any iron cards, or picards, in rowing of any set cloth, or any woollen cloth, upon pain to forfeit, as well the iron cards or pickards, as also 20*s.* *s.* 7.

The said forfeitures to be half to the king, and half to the overseer who shall discover and sue in any court of record, or before the justices of the peace; and if the overseer will not sue in half a year, then the said moiety to any other person who will sue in another half year. *s.* 10, 11.

Also by 4 *Jac.* 1. *c.* 2, no cloth-worker, sheerman or fuller, shall raise or row any cloths or kerseys with any greases or oils, but shall sheer the cloth or kersey plain and strait, without laying in any oils or other liquid or moist thing, but only upon the edge of the sheers with semet or oils, upon pain to forfeit 13*s.* 4*d.* *s.* 10.

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* In the division of that title *Larcenies excluded Clergy*, vol. ii. p. 405.

And no cloth-worker, sheerman, or fuller, shall raise, full or sheer the lists and sides of cloths and kerseys better than the midst, but shall work all alike, upon pain of forfeiting for every cloth, kersey, plain and straight, done contrary, 13*s*. 4*d*. *s*. 10.

And no person shall have for the cutting or taking away of the wool from the back sides of any cloths and kerseys, any knife, rubster, pumis-stone, or other device, but only to sheer the back side with a pair of sheers, upon pain of forfeiting for every piece wherein the same shall be so done, 13*s*. 4*d*. *s*. 11.

Also no person shall blow, spout or bedew any broad cloth or kersey on the sides near the lists with water or other moist thing, whereby the edges may shew better than it is in the ridge, crest or midst, upon pain to forfeit 13*s*. 4*d*. *s*. 12.

And by 5 and 6 *Ed*. 6. *c*. 6, no person shall press cloth with the hot press or in other deceivable manner, but only with the cold press, upon pain of forfeiture of the cloth or the value thereof, one moiety to the king, and the other moiety to him who will sue. *s*. 47. 51.

And by 21 *Jac*. 1. *c*. 18, all pressing of cloths with deceitful means, with any heat of fire, shall be adjudged to be pressing with a hot press, and punished with the like forfeitures. *s*. 11.

Payment of workmen's wages to be in money only.

6. *As to the payment of the wages of workmen employed in the woollen manufactures*.] By 4 *Ed*. 4. *c*. 1, cloth-makers shall pay to the carders, spinsters, and all other labourers, money for their wages; and deliver wools to be wrought according to the due weight, upon pain of forfeiture to the labourer the treble of his wages not paid, and also to forfeit to the labourer for every delivery of excessive weight to be wrought 6*d*. for every default. *s*. 5.

And every justice of the peace, mayor, master, warden, bailiff, portreeve, constable of hundred, and steward of the leets, may hear and determine the same, and commit the offender to the next gaol till the said forfeitures be paid: and any person not grieved may inform, in which case the offender shall forfeit to the king, or to such person as shall be entitled to fines or amercements, 3*s*. 4*d*. and they may grant like process as justices of the peace, without any fee to be taken for the execution of their offices in this behalf. *s*. 6.

Also by 1 *Ann*, *st*. 2. *c*. 18, all payments to workmen employed in the woollen manufactures shall be in money, and not in cloth, victuals, or commodities: and all wool delivered out to be wrought up, shall be delivered with declaration of the true weight thereof; on pain that every offender, in either of the said cases, shall forfeit double the value of what shall be due for such work, to be determined by two justices, who may summon and examine witnesses upon oath: but persons aggrieved, may appeal to the sessions to be holden next after notice of the

order of the said two justices; and if the sessions give judgment against the appellant, they shall order him to pay such costs as to them shall seem meet. *s.* 3, 4.

And by 10 *Ann. c.* 16, every clothier, cloth-worker, card-maker, or other person concerned in the trade of the woollen manufacture, shall pay his workmen in money, and not in goods, on pain of 20*s.* to be recovered before one justice, not concerned in the matter of complaint, upon the oath of one witness, and one moiety shall be to the informer, and the other to the poor of the parish; and if the offender neglect to pay the forfeiture fourteen days after conviction, the justice may issue his warrant to the constable to levy the same by distress and sale; and if no distress can be had, then to commit him to the gaol or house of correction, to be kept to hard labour for not exceeding three months. *s.* 6. 7.

But the prosecution must be within thirty days after the offence is discovered. *s.* 8.

And persons aggrieved may appeal to the next sessions, giving notice; and if the sessions vacate or confirm the order, they may allow costs to the party aggrieved. *s.* 9.

Also by 1 *Geo.* 1. *stat.* 2. *c.* 15, every clothier, cloth-worker, card-maker, or other person concerned in the trade of the woollen manufacture, shall pay his workmen in money, and not in goods, on pain of 40*s.* on conviction, in forty days, before one justice, on oath of one witness, to be applied, if in *London*, to the benefit of *Christ's Hospital*, elsewhere to the poor where the offence shall be discovered; and if he shall not pay in thirty days, to be levied by the constable, by warrant of such justice, by distress; and when no sufficient distress can be found, to be committed to the common gaol or house of correction for three calendar months; but persons aggrieved may appeal to the next quarter sessions, giving notice, whose determination shall be final, and not removeable by certiorari. *s.* 12, 7, 8, 10.

And further by 12 *Geo.* 1. *c.* 34. (which is extended by 22 *Geo.* 2. *c.* 27. *s.* 12, to journeymen dyers, journeymen hot-pressers, and all other persons employed in any of the woollen manufactures of this kingdom) every clothier, serge-maker, or woollen or worsted stuff-maker, or persons employed in making any woollen cloths, serges, or stuffs, or concerned in employing woolcombers, weavers, or other labourers in the woollen manufactory, shall pay all persons by them employed the full wages agreed on in money, and shall not pay the same in goods or by way of truck, or in any other manner, or make any deduction on account of any goods sold previous to such agreement. *s.* 3.

And it shall be lawful for two justices, on complaint made (within three months after the offence, 13 *Geo.* 1. *c.* 23. *s.* 17) to summon the parties offending, and for non-payment of the

wages in money to issue their warrant for levying the same by distress; and for want of distress, to commit the offender to the common gaol for six months, or until he shall pay the wages, or give satisfaction to the party. *s.* 3.

And if any person as aforesaid shall pay any wages either in goods or by way of truck, or in any other manner than in money, the offender shall forfeit 10*l.* one moiety to the informer, the other to the party aggrieved, to be levied by distress as aforesaid. *s.* 4.

But it shall be lawful for any person aggrieved to appeal to the next quarter sessions, giving notice of such appeal *; and if it shall appear that reasonable notice was not given, they shall adjourn the appeal to the next quarter sessions, and they shall have power to award costs. *s.* 5.

And this act shall extend to combers of jersey and wool, to frame-work knitters and makers of stockings, and to all persons concerned in any of the said manufactures. *s.* 8.

And finally, by 29 *Geo.* 2. *c.* 33, if any clothier, serge-maker, woollen or stuff-maker, worsted or woollen yarn stocking-maker, or person concerned in making any woollen-cloths, serges, stuffs, worsted, or woollen yarn stockings, or any other person concerned for himself or another in employing weavers, combers of jersey or wool, worsted combers, spinners, knitters, or other labourers, in the woollen manufactures, shall pay any person employed by him his wages, or other price, in goods, or by way of truck, bill or note, or in any other manner than in money, every person so offending shall forfeit 20*l.* *s.* 3.

Which penalties may be recovered by action of debt, by any person who shall sue for the same—or may be levied upon conviction, before any two justices of peace for the county or place where the offence is committed, either by the confession of the party, or upon the oath of one witness, in case the same be not paid within fourteen days after such conviction, by distress and sale of the goods of the offender, by warrant of such justices; and for want of sufficient distress, the said justices shall commit the offender to the house of correction for not exceeding three months, or until satisfaction be made. *s.* 4.

And if the same be levied upon conviction before the justices of peace, one moiety shall be paid to the poor of the parish where the offence was committed, and the other moiety to the informer. *s.* 5.

But persons aggrieved by the order of the justices may appeal to the next general or quarter sessions, first entering into a recognizance with sufficient security before the justices to prosecute and abide by the order that shall be made on such appeal,

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* But for the conditions now required upon such appeal, see sec. 20 of 17 *Geo.* 3. *c.* 56. under the next title MANUFACTURERS.

and giving eight days notice, in writing, to the party in whose favour such order hath been made; and the sessions are to determine such appeal, and to award costs and damages, and by their order or warrant may levy such costs and damages by distress; and for want of sufficient distres, may commit the party to the common gaol, for not exceeding three months, or until satisfaction shall be made; and the order of sessions shall be final: and no proceedings of the justices, out of or in sessions, shall be removed by certiorari or otherwise. s. 7.

And all prosecutions for offences against this act shall be commenced within three months after the offence committed. s. 8.

And by 30 *Geo.* 2. *c.* 12. *s.* 4, if any clothier or maker of any mixed medley or white broad-cloth shall neglect to pay to the weavers employed by him their wages or price agreed on in money, within two days next after the work is performed and delivered to such employer, or some person on his behalf (the same being demanded), every such clothier or person so offending shall for every such offence forfeit 40s. to be recovered in such manner, and disposed of as the penalties made payable by 29 *Geo.* 2. c. 33 are.

Length of warping bars, and weight of materials delivered out to workmen.

*And as divers disputes have arisen between the clothiers and makers of woollen goods and the manufacturers employed by them, concerning the length of the warping bars, and the uncertainty of weights by which wool, yarn, and other materials have been delivered out to the workmen, it is enacted* by 13 *Geo.* 1. c. 23, that it shall not be lawful for any maker of mixed, medley, or white cloth, to use any warping bars, but only such as shall be of the measure following, *viz.* every long warping bar shall be in length three yards and three inches, and no more; and every round warping bar shall be four yards and four inches round, and no more; the three inches on the long bar, and the four inches on the round bar, being in lieu of the over-measure usually allowed in cloths; and the thrums at the end of the warping bars shall not exceed eight inches in length; and if any maker of such cloth shall use any warping bar of other length, or with thrums exceeding eight inches in length; he shall forfeit 10*l.* *s.* 1.

And every maker of such cloth or goods mixed with wool shall give out all wool, yarn, and other materials, by weight of sixteen ounces to the pound, and shall receive back the same by the same weight, without fraud, upon pain of 5*l.* for every offence. *s.* 2.

All prosecutions for offences contrary to this act shall be heard by two justices of peace, upon information given on oath within three calendar months after the offence; and the justices are empowered to hear and determine the same, and on conviction to issue their warrants to levy the penalties by distress and sale of goods; one moiety to the informer, and the other to the

poor of the parish; and for want of distress, to commit the offender to the county gaol for any time not exceeding three months, or till satisfaction be made. *s.* 4.

And all disputes relating to work, wages, or damages, between any clothier and weaver, or other person employed in such manufacture, shall be heard and determined by two justices of peace; who are required, on complaint, to summon the parties, and to hear and examine on oath, and adjudge satisfaction; and to give costs and damages, and to issue their warrants to levy such costs and damages by distress and sale of goods of such persons who shall refuse for ten days to pay the costs and damages; and for want of distress to commit the party to the county gaol, or house of correction, for not exceeding three months, or till satisfaction be made. *s.* 5.

But persons aggrieved by any order of the justices may appeal to the next quarter sessions, giving six days notice; and the justices in quarter sessions may award such costs and damages as they may think reasonable, and levy the same by distress; and for want of distress commit the party to the county gaol or house of correction for not exceeding three months, or till satisfaction be made, and such order of sessions shall be final; nor shall the proceedings of any justices in pursuance of this act be removed by certiorari. *s.* 6.

And it shall be lawful for any one justice of peace, upon information upon oath that any persons are suspected to be guilty of any of the ill practices aforesaid, to issue his warrant to any constable or other peace officer, or to any churchwarden or overseer, directing him in the day-time to enter into any house, or other suspected place, to search for all such bars and weights as shall be made use of by any clothier or maker of woollen goods; and if such person shall interrupt the officer, he shall forfeit 5*l.* *s.* 7.

And every maker of mixed medley, or white broad-cloth shall pay the weaver according to the number of yards that the chains are laid on the warping bars, and not otherwise, on pain of 5*l.* *s.* 9.

7. *As to the measuring of mixt or medley broad cloth.*] By 10 *Ann.* c. 16, *all mixture or medley broad cloth* shall be measured at the fulling mill after it is milled, scoured, and thoroughly wet, by the master of the mill, who must take oath before some neighbouring justice, that he will truly perform such measuring; and the justice shall give him a certificate that he hath made such oath. *s.* 1.

Measuring of MIXT OR MEDLEY BROAD CLOTH.

And every mill-man and fuller shall, upon pain of 10*l.* * have

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* Which penalty may be recovered before one justice not concerned in the matter of complaint, upon the oath of one witness; and one

in his mill a table twelve foot long and three feet wide, whereon the cloth shall be doubled and laid plain, with the length of a yard nailed thereon, to which shall be added one inch that the same contain thirty-seven inches. *s.* 4.

And the fuller shall fix a leaden seal at the head of every cloth, before it shall be carried from the mill, which seal the owner of the cloth shall provide, and the fuller shall rivet the seal on the cloth, and stamp his name on it, mentioning in figures the length and breadth thereof, the owner of the cloth paying him a penny. *s.* 1.

He is also to enter in a book to be kept by him a fair and due register or entry of the marks, sort, number, length and breadth of every such cloth. 1 *Geo.* 1. *st.* 3. *c.* 15. *s.* 2.

And the length and number of yards so stamped on the seal shall be a rule of payment to the buyer of the cloth. 10 *Ann.* *c.* 16. *s.* 1.

And if after the cloth hath been milled, sealed, and stamped, any part shall by accident be damaged and taken off, the remaining part shall be again measured, sealed, and stamped. *s.* 1.

And no clothier or clothworker shall after any medley broad cloth is fully wet, sealed, and stamped, stretch the same above one yard in twenty, or above one nail in the breadth, on pain that the offender, being convicted before the cloth is sold or exposed to sale, shall forfeit 20*s.* to be recovered as the penalty in sec. 4. s. 3.

But if the buyer is dissatisfied with the measure, he may have it measured again in the water within eight days after the delivery; for by 1 *Geo.* 1. *st.* 2. *c.* 15, all mixed or medley broad cloth shall within eight days after the delivery, (*s.* 4.) at the instance of the buyer, for proof thereof, be put into water, and then measured by two indifferent persons, to be chosen, one by the buyer and another by the seller; and if they disagree in ascertaining the length and breadth, then the admeasurement shall be made by a third person chosen by the two persons appointed as before; and if the said two persons shall not in two hours choose such third person, or if, being chosen, he

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moiety shall be to the informer, and the other to the poor of the parish; and if the offender neglect to pay the forfeiture fourteen days after conviction, the justice may issue his warrant to the constable to levy the same by distress and sale; and if no distress can be had, then to commit him to the gaol or house of correction, to be kept to hard labour not exceeding three months. 10 *Ann.* *c.* 16. *s.* 7.

But the prosecution must be within thirty days after the offence is discovered. *s.* 8.

And persons aggrieved by the warrant or order of the justice may appeal to the next quarter sessions, giving notice; and if the sessions shall vacate or confirm the order or warrant, they may allow costs to the party aggrieved. *s.* 9.

will not take upon him the admeasurement, then, if in *London*, it shall be finally determined by the keeper of *Blackwell-hall*, who shall be sworn before some justice of peace, truly to perform such measuring; and such admeasurement shall be conclusive to all parties, and be the rule of payment to the buyer. *s.* 1.

And if elsewhere than in *London*, the said cloth shall be measured by any two indifferent persons, as aforesaid; and if they disagree, or refuse to make the admeasurement, or to appoint a third person, then a fit person shall be appointed by the chief magistrate of such city, &c. where the cloth shall be sold, who shall swear such person, and he determining the measure of such cloth, shall receive 6*d.* for each piece measured, to be paid by the buyer. *s.* 1.

And if on such admeasurement there be found a less quantity in length or breadth than is mentioned in the seal directed, by the act 10 *Ann. c.* 16. to be fixed to such cloth by the master, &c. of the fulling-mill, then the seller of such cloth shall forfeit the sixth part of the value thereof; and the said forfeiture shall be paid by the buyer, and by him deducted out of the price of the cloth, on certificate thereof by any of the persons measuring the same, and making oath thereof before a justice of peace, who is to give the said person a certificate without fee. *s.* 1.

And all such money as the seller of such cloth shall pay on account of such fraudulent seal, shall on demand be repaid by the master, &c. who affixed the seal, to the owner of such cloth. *s.* 1.

But to prevent convictions by surprize, the buyer of medley broad cloth shall, within six days after delivery, give two days notice, to the seller, or his factor, of the time when such cloth is to be wetted, unless it be by consent of the buyer and seller in writing; and if the seller or his factor doth not appoint an indifferent person, nor attend the admeasurement which shall be made within eight days after delivery, then the buyer or his agent may prove the cloth by water at *Blackwell-hall*, and the hall-keeper shall measure the same on the table, and ascertain the true measure, and make a certificate thereof; which certificate shall within ten days after such admeasurement, be filed with the clerk of the peace, who is to file the same among the records of the county, &c. and for so doing he shall have 1*s.* and such certificate shall be the rule of payment to the buyer, and shall be deemed a special conviction of the parties offending to make them forfeit as aforesaid. And the clerk of the peace or his deputy is to give an attested copy of such certificate to any person demanding the same, for which he shall have 1*s.* which attested copy is to be a sufficient authority to the clothier, &c. to demand of the master, &c. of the fulling-mill, the forfeitures deducted out of the price of any of the cloths aforesaid, for want of length or breadth contained in the seals. *s.* 4.

*And that there may be the same method of measuring mixt or medley broad cloth*, the hall-keeper of *Blackwell-hall* shall, at the charge of *Christ's Hospital*, have in the said hall a table thirty yards long, to each of which yards shall be added one inch, so that each yard shall consist of thirty-seven inches, and shall be distinguished by a mark along the table, and three foot wide, whereon the cloth shall be doubled and laid at length where the said admeasurement of any medley broad cloth, if in *London*, shall be made, and the cloth shall be there put in water before such admeasurement. *s.* 3.

All medley broad-cloths, which shall be exposed to sale in *England*, shall be stamped with the watch-measure thereof, on the seal of the master, &c. of the fulling-mill, by whom the cloth was wetted, fulled, and milled; and every clothier putting to sale such cloth before sealed and stamped, on which seal shall be specified the name of the said master, &c. of the fulling-mill, the length and breadth of the cloth, with a crown on the rivet of the seal, shall forfeit the sixth part of the cloth. *s.* 5.

And if any master, &c. of a fulling-mill shall neglect to take the oath directed by the act 10 *Ann. c.* 16, or to fix a seal at the head end of every medley broad cloth before it be carried from the mill, or to enter the same in a book; or if any person shall take off, deface, counterfeit, or alter such seal, or add any other before the cloth is sold, he shall, being convicted by oath of one witness, forfeit 20*l.* in discharge of the 20*s.* that may be incurred by virtue of the said former act. *s.* 2.

Recovery of penalties.

All offences against the act 1 *Geo.* 1. *st.* 2. *c.* 15, shall be determined by one justice of the county, &c. (not being concerned in the matter of complaint,) where the same shall be discovered, or the offender inhabits, upon the oath of one witness. And all the forfeitures by this act shall be paid (after charges of conviction deducted), if in *London*, to the use of *Christ's Hospital*; if in any other place, to the poor of the parish, &c. where the offence shall be discovered: and if any offender refuse to pay the forfeitures (being lawfully demanded) thirty days after conviction; or if the owner, &c. of the fulling-mill refuse to pay the forfeiture for want of length or breadth of admeasurement, it shall be lawful for the justice before whom the conviction was made, or where such owner, &c. inhabits, to issue his warrant to the constable where such offender dwells, or can be found, to levy the same by distress and sale of goods; and where no distress can be found, to commit the offender to the common gaol or house of correction, to be kept to hard labour three calendar months. *s.* 7.

But all offences committed against this act, saving in the case of the mill-man, on refusal of payment of the forfeitures for want of length and breadth, shall be prosecuted in forty days after the offence discovered. *s.* 8.

And if any person finds himself aggrieved by any warrant or order made by any justice on any such conviction, he may appeal to the next quarter sessions, giving notice; and the determination of such quarter sessions shall be final; and the justice there shall allow costs. *s.* 10.

*But nothing neither in* 10 Ann. c. 16, or 1 Geo. 1. st. 2. c. 15, *shall extend to any cloth made in the county of* York. 10 *Ann. c.* 16. *s.* 11. 1 *Geo.* 1. *st.* 2. *c.* 15. *s.* 14.

Tenters.

*And to prevent the ill practice of undue straining of mixt or medley broad cloth,* by 13 *Geo.* 1. *c.* 23, every owner of tenters for mixed or medley broad cloth, in the counties of *Gloucester*, *Wilts*, and *Somerset*, shall measure the tenter, and mark in figures the length of yards, beginning at No. I. and so continuing to the end, upon the top bar, and on the foreside thereof, on pain of 5*l.* on conviction before two justices, on information on oath, in three calendar months after the offence, to be levied by distress, half to the informer and half to the poor; for want of distress to be committed to gaol for not exceeding three months, or till satisfaction be made: but persons aggrieved may appeal to the next quarter sessions, giving six days notice, whose order shall be final; and no proceedings are removable by certiorari. *s.* 10. 4. 6.

And the justices of the said counties, at *Easter* sessions yearly, shall appoint skilful men to be inspectors for the year ensuing, who before they enter upon their office, shall take the following oath before a justice of the peace:

*I* A B *do swear, that I will well and truly execute the office of an inspector of mixed or medley woollen broad cloth within this county, according to the laws and statutes of this realm, and according to the best of my skill and knowledge.* So help me God. *s.* 10.

Which said inspector shall have power at all seasonable times in the day-time (*Sundays excepted*) to enter and inspect all mills, shops, out-houses, and tenter grounds, of every clothier, mill-man, or other person concerned in the making and milling of mixed or medley broad cloth: and they are to measure the length of every tenter or rack, and the length and breadth of every cloth there, and stamp his name on a lead seal to be furnished by the maker, and affix the same at the head-end of every cloth, and shall keep books in which shall be set down the clothier's, mill-man's, or other person's name, and the number, length and breadth of every cloth which shall be made within their respective divisions; and shall at every quarter sessions, give in a copy of such register, with an account of what penalties have been levied by virtue of this act within their respective divisions. *s.* 10.

And if any mill-man within the said counties shall send home to any clothier any cloths before they are inspected

and measured, he shall for every piece forfeit 40*s*. to be recovered as above. *s*. 14.

And if any person within the said counties shall refuse the inspector entrance, he shall forfeit 10*l*. in like manner. *s*. 11.

And if any inspector shall act against his oath, and be convicted, he shall forfeit 20*l*. *s*. 12.

And the said justices may allow each inspector a salary not exceeding 30*l*. out of such money as shall be received by the treasurers of the said counties, as after directed: *s*. 10.

That is to say; every maker of mixed or medley broad cloth shall pay to the inspectors 2*d*. per cloth, before the cloths be sent from the mills; and the inspectors shall every three months, or oftener, pay the money to the treasurer of the county, to be applied by direction of the justices at their quarter sessions, towards the saleries of inspectors. *s*. 13.

Length and breadth of YORKSHIRE CLOTHS.

8. *As to Yorkshire cloths in particular.*] Every broad cloth made in *Yorkshire*, and well scoured and fully milled, shall be five quarters and a half in breadth, within the lists, in water. An end or half cloth fully wet shall not exceed twenty-three yards in length. Every long or whole cloth, being fully wet, shall not exceed forty-six yards in length. 7 *Ann*. c. 13. *s*. 1.

And whole thick kerseys, whole thick plains, huggabags, and broken quilted kerseys shall not be made under eighteen yards in length, and not less than three quarters and a half in breadth when fully wet. 21 *Geo*. 1. *st*. 2. *c*. 15. *s*. 15.

But it shall be lawful for every clothier in the west riding to make narrow woollen cloth (except white kerseys, and cloths called half thicks) of such length and breadth as he shall think fit. 11 *Geo*. 2. *c*. 28. *s*. 13.

Any person making or exposing to sale any of the said cloths, not made according to the said breadths and lengths, and being convicted by the oath of any searcher of cloth in *Yorkshire*, or by the oath of one witness, before one justice of peace (being no trader in the woollen manufacture), shall, for every inch wanting in the breadths, and for every yard the long or whole cloths shall exceed forty-six yards, and the end or half-cloths shall exceed twenty-three yards: and for every half yard the whole thick kerseys or whole thick plains shall be less in length than eighteen yards, forfeit 20*s*. 7 *Ann*. *c*. 13. *s*. 2. 1 *Geo*. 1. *st*. 2. *c*. 15. *s*. 15.

But if any such cloths, without the wilful default of the maker, shall in some parts (not exceeding in the whole one fifth part) be less than the respective breadth in length, yet such may be sold without incurring the penalty. 7 *Ann*. *c*. 13, *s*, 7.

And if any maker of *Yorkshire* cloth, or other person concerned in that manufacture, shall fix any other mark on his cloth than his own christian and surname, and place of residence, or the first letters of the same, he shall upon conviction forfeit 40*s*. 1 *Geo*. 1. *st*. 2. c. 15. *s*. 15.

The occupier of every fulling-mill in *Yorkshire*, where the said cloths shall be milled or fulled, shall, before it is carried from the mill, fix at each end of the cloth a seal of lead, rivetted and stamped with his name, with the number of yards and inches, which the cloths contain in length and breadth when wet, scoured, and milled, for which the owner shall pay a penny. 7 *Ann*. c. 13. *s*. 3.

The fuller neglecting to fix such seal, or any person defacing or altering the figures, before the cloth is exported or sold to the retailers, or stretching or straining any piece of the woollen cloth more than an inch in breadth in a quarter of a yard, or any piece of the broad cloths more than a yard in twenty yards in length, or the whole thick kerseys and whole thick plains, huggabags, and broken quilted kerseys, more than half a yard in every eighteen yards, or if any fuller shall mill or full in any one stock, at the same time, more than one whole broad cloth, or two half broad cloths, and being convicted as aforesaid, he shall forfeit 20*s*. 7 *Ann*. c. 13. *s*. 4. 1 *Geo*. 1. *st*. 2. c. 15. *s*. 15.

One moiety of the forfeitures shall be to the informer, the other moiety to the poor of the place where the offence was committed. And an offender neglecting to pay in seven days after conviction, the justice before whom he was convicted may grant a warrant to the constable to levy by distress; and if no sufficient distress can be had, then to commit him to the house of correction or gaol, to be kept to hard labour, for any time not exceeding one month for one offence. 7 *Ann*. c. 13. *s*. 5. 1 *Geo*. 1. *st*. 2. *c*. 15. *s*. 15.

But the penalties shall be inflicted within twenty-one days next after the offences are discovered. 1 *Geo*. 1. *st*. 2. *c*. 15. *s*. 16.

And the party aggrieved by the conviction of the justice, may appeal to the next quarter sessions; and if the sessions shall confirm or disannul the justice's order, they may allow costs. 7 *Ann*. c. 13. *s*. 8. 1 *Geo*. 1. *st*. 2. *c*. 15. *s*. 16.

Narrow woollen cloth made in the west riding.

By 11 *Geo*. 2. *c*. 28, every maker of narrow woollen cloth within the west riding of the county of *York*, shall set in the head of every piece by him made (except white kerseys and cloths called *half thicks*) the initial letters of his name. *s*. 1.

And every piece of narrow woollen cloth made, milled, or exposed to sale, in the said west riding (except as before) shall be measured at the fulling-mill when it is fully wet, both by the mill-man and by the searcher, who shall measure the

same down the middle for the length, and within the lists for the breadth. *s.* 1.

And every mill-man shall affix at one end of every cloth a seal of lead to be furnished by the clothier; and shall rivet the same, and stamp his own name at length, and the length and breadth of such cloth in figures upon the seal; and the searcher shall also affix a seal at the other end, whereon he shall stamp his name, and the length and breadth. *s.* 1.

And the mill-man and searcher shall respectively keep books, wherein they shall enter the day and year when every such piece of cloth is fulled or milled, and the name and place of abode of the owner, and the length and breadth. *s.* 1.

And if any maker of such cloth shall neglect to set the letters of his name on the head of each cloth;

Or if any mill-man or searchers shall neglect to fix such seals at the end of every such cloth before it be carried from the mill, or to make entries as before directed, or shall refuse to permit any buyer to inspect such entries;

Every person so offending shall forfeit the sums after-mentioned, viz. every maker shall forfeit 20*s.* and every mill-man and searcher 5*l.* *s.* 2.

And every piece of such narrow cloth shall be measured by the maker after it is brought from the mill, and before it be set upon the tenter; and if such maker finds such cloth to be less than the measure stamped at the mill, or if such cloth by lying wet in an improper season shall fall short of the measure, the maker or owner shall send the same to the mill-man and the searcher who measured the same, to be re-measured; and in case any maker or owner of such cloth shall neglect so to do, he shall forfeit 5*s.* *s.* 5.

And it shall be lawful for the maker or owner of such cloth, to stretch every such piece one inch in every yard in length, and two inches in every three quarters of a yard in breadth; but if any maker, buyer, dresser, or dealer in such narrow cloth shall strain or stretch any such cloth above the proportions before mentioned, he shall forfeit for the first half yard in length, or first inch in breadth, 10*s.* and for every other half yard in length, or half inch in breadth 20*s.* *s.* 6.

And if any person shall take off, alter, deface, counterfeit or cut out, any of the said seals or any letters set in such cloth, before the same shall be sold or cut by the retailer, or exported beyond the seas, such person shall forfeit 40*s.* *s.* 7.

And the justices of peace for the west riding shall, at their quarter sessions after *Easter*, yearly, appoint so many men of good character within the riding who have served apprenticeship to the trade of making narrow cloth, or who shall have exercised such trade three years, as they shall think rea-

sonable, to be searchers for the year ensuing, and may allow so each of them such salary as they shall think fit; which searchers shall have power at all seasonable times to enter into and inspect all mills, shops, warehouses, and tenter grounds, of makers, merchants, or dealers in narrow cloth, and to measure any cloth which they shall suspect to be over-stretched or strained; and every such stretcher, before he enter upon his office, shall take the following oath before one of the justices. *s.* 3.

*I*, A B, *do swear that I will well and truly execute the office of a searcher of narrow woollen cloth within the west riding of the county of* York. *So help me GOD.*

And if any person appointed searcher shall die during the year, or shall by sickness or accident be rendered incapable of the office, it shall be lawful for any one justice of the riding living near the place where such searcher shall reside, to appoint some other proper person to supply the place of such searcher until the next quarter sessions, to be there confirmed, or another appointed in his place. *s.* 4.

And a sum not exceeding 3*d.* for every such narrow cloth made or milled within the west riding (which sum shall be settled by the justices at their quarter sessions after *Easter*, yearly) shall be paid by every maker or owner of such cloth, before the same is carried from the fulling-mill, to such persons as the justices shall appoint; and all money so raised shall be applied to pay the salaries of searchers, and to defray the other necessary expences of putting this act in execution, as the justices at their quarter sessions shall direct. *s.* 8.

And it shall be lawful for such mill-man or searcher, or such other person as the justices shall appoint to receive the money, to detain such cloth at the fulling-mill till the money be paid; and in case the owner of such cloth shall neglect to pay for the space of eight days after the same is demanded, it shall be lawful for the person appointed to receive the money to sell one or more pieces of the cloth, and to retain so much as shall be due from the owner of the cloth. *s.* 9.

The offences in this act shall be heard and determined by one justice, not being a dealer in woollen cloth, upon the oath of one witness, notice being given to the persons accused; and all penalties shall be paid into the hands of the justice, who shall (after the charges of conviction deducted) pay one moiety to the informer, and to the treasurer of the west-riding, at the next quarter sessions, towards the expenses of this a[illegible]; and if any offender shall within ten days after conviction (notice being given at his last place of abode) neglect

to pay any penalty, or shall not appeal to the quarter sessions, it shall be lawful for the justice, or any other justice for the riding, not being a dealer, upon certificate of such conviction, to issue warrants to the constable of the place, or the bailiff of the liberties where such offender shall inhabit, to levy the same by distress and sale of goods; and if no sufficient distress can be found, to commit such offender to the house of correction, to be kept to hard labour for one month. *s.* 10.

But all informations and prosecutions against any mill-man or searcher shall be commenced within eight days after the cloth shall be removed from the fulling-mill; and all informations against any clothier or dealer shall be commenced within one month after the cloth is delivered; and all prosecutions against any other persons for any of the penalties in this act shall be commenced within one month after the offence. *s.* 11.

And any person aggrieved may appeal to the next quarter sessions, to be held after fourteen days from such conviction, giving ten days notice to the person discovering the offence; and the quarter sessions shall allow costs to the party aggrieved. *s.* 12.

And by 5 *Geo.* 3. *c.* 51. (which is declared by *s.* 27, to extend to all woollen cloths made in the said west riding, except such narrows as are provided for by the above act of 11 *Geo.* 2. *c.* 28.) and by the 6 *Geo.* 3. *c.* 23. (which extends to all such woollen cloths, except as before excepted, and except such woollen goods as are made for blanketing, and striped duffeled blankets, *s.* 23.) it is enacted as follows:

Every clothier and maker of cloth shall weave or sew into the head of every cloth and end his name and place of abode, either in distinct letters or words, or in some common or known abbreviation, sufficient to be read or understood, before he shall expose the same to sale; and if he shall expose to sale any cloth contrary hereto, he shall forfeit 40*s.* for every piece. 6 *Geo.* 3. *c.* 23. *s.* 13. 5 *Geo.* 3. *c.* 51. *s.* 18.

And for every yard of cloth exceeding the length of fifty-eight yards, whether in one cloth, or in two short cloths or ends, which shall be milled in one stock, at one time, the owner shall pay to the miller one halfpenny *per* yard, for every yard such cloth shall exceed the length of fifty-eight yards, over and above the usual price for milling a stockful, or fifty-eight yards. 5 *Geo.* 3. *c.* 51. *s.* 19.

And all disputes and demands between the makers of cloths and the occupiers of mills, relating to the wages for fulling, milling, or scouring, shall, in case such occupiers desire the same, and the matter in dispute shall not exceed 2*l.* be determined by one justice (not being a trader or dealer in the woollen manufacture, farmer, or occupier of a mill, who upon complaint may summon the parties, and examine upon oath,

and adjudge such damages, and give costs, not exceeding 10*s.* and levy the same by distress and sale of the goods and chattels of such person who shall refuse for ten days to pay such costs or damages. 5 *Geo.* 3. *c.* 51. *s.* 20.

And the justices for the west riding of the county of *York* (not being dealers in woollen cloth, or occupiers of any mill) at their general quarter sessions to be holden next after *Midsummer* yearly at *Bradford*, shall appoint *so many persons* brought up in the manufacture of woollen cloth in the said riding, and under the age of sixty years, to be SEARCHERS or MEASURERS of cloths at the fulling-mills; and to be INSPECTORS and SUPERVISORS for the purposes in 5 *Geo.* 3. *c.* 51, *as they shall think proper.* 6 Geo. 3. *c.* 23. *s.* 1.

That is to say, the *searchers* and *measurers*, to be searchers and measurers of cloth within the said riding, at such mills and other places as shall seem meet. 5 *Geo.* 3. *c.* 51. *s.* 2.

The *inspectors*, to be inspectors of all broad woollen cloths, and of so many of the work-shops, tenters, tenter-grounds and warehouses, where cloth shall be dressed or tentered, and in such manner as the justices at their general or adjourned sessions shall think proper. 5 *Geo.* 3. *c.* 51. *s.* 7.

And the *supervisors*, to be supervisors of the fulling-mills, and of the conduct and behaviour of the searchers and measurers, and of all broad woollen cloths, and the work-shops, tenter-grounds and warehouses where cloth shall be milled, dressed, or tentered, and of the conduct of the inspectors.* 5 *Geo.* 3. *c.* 51. *s.* 7.

And every searcher and measurer, inspector and supervisor, before he enter upon his office, shall take the following oath:

*I*, A B, *do swear, that I will well and truly to the best of my skill and power execute the office of a searcher and measurer, or an inspector or supervisor* (as the case may be) *of woollen cloths, within the west riding of the county of York. So help me GOD.* 5 Geo. 3. c. 51. s. 7.

And every searcher, measurer, inspector or supervisor, shall also, before he enters upon his office, at his own expense, give and execute a bond to the treasurer of the west riding, with a surety, to be approved by the justices appointing, in the penalty of 50*l.* conditioned for accounting for and paying the money received by virtue of his office. 6 *Geo.* 3. *c.* 23. *s.* 9.

And the said justices shall assign, allow, and appoint to the

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* And the supervisors are to be stationed in such places, and in such manner, as the justices think proper, to prevent false stamping and undue stretching of woollen cloth. 5 *Geo.* 3. *c.* 51. *s.* 7.

said *searchers* and *measurers* appointed, such yearly salaries as the justices at their general or adjourned sessions shall think proper. 5 *Geo.* 3. *c.* 51. *s.* 2.

And they shall also appoint to the *inspectors* salaries not less than 20*l.* a year; and to the *supervisors* salaries not less than 40*l.* a year, and 10*l.* more if their duty requires them to keep a horse. 5 *Geo.* 3. *c.* 51. *s.* 7.

And if any searcher and measurer, or an inspector or supervisor, shall die during the year in which he was appointed, or shall be removed from his office, or shall by sickness or other accident be incapable of executing the office, it shall be lawful for one justice to appoint some other searcher and measurer, inspector or supervisor (until the next *Midsummer* sessions, 6 *Geo.* 3. *c.* 23. *s.* 18.) to be there confirmed, or another person appointed in his place, or during the incapacity of such searcher and measurer, inspector or supervisor. 5 *Geo.* 3. *c.* 51. *s.* 10.

And in case any of the officers to be appointed, or who shall enjoy any place under this or the former act, shall keep a public house for the selling of ale, beer, or other liquors, or shall be concerned in the making, buying or selling any wool, woollen manufacture, or goods commonly made use of in dying, or be guilty of any misbehaviour or neglect of duty, and shall thereof be convicted by the oath of one witness before two justices, it shall be lawful for the justices at the quarter sessions next after conviction, on producing the same, or due proof thereof, to discharge such officer, and appoint another person in his room; and such person so convicted and removed shall be from thenceforth for ever disabled to exercise any office under these acts. 6 *Geo.* 3. *c.* 23. *s.* 17.

And such searchers and measurers shall, at the fulling-mills, where stationed, measure all the cloths, and ends or half-cloths which shall be there milled, at the times and places herein after mentioned; that is to say, such cloths or ends as shall be streamed or washed in the goit or mill-stream shall be measured within six, and not sooner than four hours after streamed or washed; and such as shall not be streamed or washed, within four hours after the same shall come out of the stock. 5 *Geo.* 3. *c.* 51. *s.* 3.

And every such searcher and measurer shall, on one end of every such cloth, before carried from the mill, affix and rivet a seal of lead, to be furnished by the maker, and stamp in words and figures, upon every such rivet, his name, and the name of the mill; and upon the residue of such seal, the length and breadth of every such cloth, together with the number of each cloth milled at such mill successively, beginning at number one, at the 25th *March* yearly, and proceeding progressively to the 25th *March* next following. 5 *Geo.* 3. *c.* 51. *s.* 3. 6 *Geo.* 3. *c.* 23. *s.* 2.

And immediately after the cloth shall be measured, sealed, and stamped as aforesaid, the said searcher and measurer shall enter in a book, to be provided by the treasurer of the riding, and kept by such searcher or measurer, the name and place of abode of the maker, and the colour or sort, together with the length, breadth, and number, on the seal. 5 *Geo.* 3. *c.* 51. *s.* 3.

And shall give, once in every month, to the supervisor within the district, an account of all cloths milled, measured, and stamped, at such mill during such months; and the owner or maker shall pay to the said searcher and measurer, for measuring and sealing,

*For the seal of every whole or long cloth, containing in length* 35 *yards or upwards*, 6*d*.

*And for every end or half-cloth, containing less than* 35 *yards, and more than* 30 *yards in length*, 4*d*.

*And for every end or half-cloth, less than* 30 *yards in length*, 3*d*.

Which sums shall be accounted for and paid by such searcher or measurer, to the treasurer of the west riding, to be applied for such purposes as after directed. 5 *Geo.* 3. *c.* 51. *s.* 3.

And if any searcher or measurer shall neglect or refuse to measure and stamp any such cloth, or to give such monthly account, or give a false account, he shall for the first offence, forfeit 20*s*. and for the second offence, his office, and be incapable of being appointed a searcher or measurer. 5 *Geo.* 3. *c.* 51. *s.* 4.

And if any clothmaker shall take away his cloth from any mill, in case the same hath been streamed or washed, before the same hath lain six hours after streamed, or before it hath lain four hours after it hath come out of the stock (in case it shall not be washed or streamed), unless such cloth shall be sooner measured or stamped. And if any cloth-maker shall take away his cloth before measured and stamped, or before the money for measuring, sealing, and stamping, be paid, or shall take away his cloth after nine in the evening, or before five in the morning, unless measured and stamped, he shall forfeit 20*s*. 5 *Geo.* 3. *c.* 51. *s.* 5.

And every maker of broad cloth, after brought from the fulling-mill, and before the same shall be put upon the tenter, shall measure the same, and affix, on the other end of every such cloth, one other seal of lead, and shall rivet the same, and stamp upon such seal or rivet, in figures, the length and breadth. 5 *Geo.* 3. *c.* 51. *s.* 6.

And the said supervisors shall be daily employed in visiting the mills, tenters, tenter-grounds, work-shops, and places within their districts, and shall measure and mark with a seal of lead, whereon shall be impressed the name of such supervisor, so many of such cloths as they conveniently can, and keep a

regular account, and transmit the same, together with the accounts by them received from the searchers and measurers, to the justices at every quarter sessions; and if any of the inspectors or supervisors shall be negligent or remiss in his duty, or shall transmit a false account, he shall forfeit his office. 5 *Geo.* 3. c. 51. s. 8.

And the inspector or supervisor may in the day-time enter into any shops, out-houses, tenter-grounds, or warehouses to search; and any person obstructing the same shall forfeit 10*l*. 5 *Geo.* 3. c. 51. s. 11.

And in case any inspector shall suspect that any cloth shall be in the possession of any buyer, dresser or cloth-worker not truly stamped and measured at the fulling-mill; then the said inspector shall give notice to such merchant, buyer, dresser, or cloth-worker, of his suspicion, describing the cloth by the maker's name or seal thereon; after which notice, such merchant, dresser, or cloth-worker, shall give two hours notice to such inspector, of the time at which he intends to put such cloth into water, in order that such inspector may attend the wetting and measuring; and if he shall without, or contrary to such notice put such cloth into water, and be thereof legally convicted, he shall forfeit 20*s*. 6 *Geo.* 3. c. 23. s. 7.

And if any supervisor or inspector shall wilfully refuse or neglect to attend for measuring and stamping, for two hours after notice, he shall forfeit 20*s*. 6 *Geo.* 3. c. 23. s. 8.

But it shall not be lawful for any inspector or supervisor to enter into any house, warehouse, or out-house of any merchant, dresser, or other dealer in cloth (unless they be made use of for dressing, tentering, or keeping of wet or undressed cloth) under pretence of searching for or examining any woollen cloth, which he shall suspect to be falsely stamped, or unduly stretched; or to search or examine any cloth, after put up in papers for pressing, or sent to be frized, or otherwise fully manufactured, or fitted for exportation or home consumption. 6 *Geo.* 3. c. 23. s. 10.

If any inspectors or supervisors shall find any cloth, or end, or half cloth, falsely stamped by any measurer, above one inch in breadth, in more than one third part of the length thereof, or above half a yard in length, such inspector or supervisor shall, within seven days, give information thereof to one justice (not being a dealer in woollen cloth, or occupier of any mill), and on conviction, such searcher or measurer shall forfeit 10*s*. 6 *Geo.* 3. c. 23. s. 3.

And if the merchant or buyer of any such cloth shall suspect the lengths and breadths of such cloth not to be the same as stamped on the seal, then it shall be lawful for the merchant or buyer, within forty days after sale and delivery of such cloth (and before the same shall have been raised, rowed, dressed, dyed, or put into water), to put such cloth into cold water for

not exceeding four hours, and after the same shall be fully wet and taken out of such water, to hang the same across a plain rail or horse-tree, for not less than two hours, nor more than four, and then immediately to cause the same to be measured by some sworn searcher, inspector, or supervisor; and if there shall be found a less quantity in length or breadth, in more than one third of the length thereof, than is mentioned on any of the seals, the searcher, inspector, or supervisor, who last measured such cloth, shall within three days give information to one justice (not being a dealer in woollen cloth, or occupier of any fulling-mill) that the searcher, measurer, or supervisor, who before measured and stamped the said cloth, did wilfully affix such false seals; and such measurer or supervisor, being thereof convicted, before such justice, upon the oath of such searcher, inspector, or supervisor, who last measured the said cloth, or any other credible witness, shall forfeit, for the first inch in breadth, or half-yard in length, that such cloth or end of cloth, shall fall short of the measure marked on the seals, 5*s*. and for every other inch in breadth, or half-yard in length, the further sum of 10*s*.: and in case any searcher, inspector, or supervisor, who last measured such cloth, shall neglect, for three days, to give such information as aforesaid, being convicted before such justice, shall forfeit 40*s*. and be for ever disabled to exercise any office under this act. 6 *Geo*. 3. *c*. 23. *s*. 4.

And in all cases upon such admeasurement of cloth, where the same shall be found to be of less length or breadth than mentioned on the seals, the searcher, inspector, or supervisor, who last measured the same, shall affix on every such cloth, or end, a new seal, and rivet the same, and shall stamp on such rivet his own name, adding the words inspector or supervisor; and on the same seal the true length (accounting thirty-seven inches to the yard in length) and the breadth between the lists in inches; and the length and number of yards so stamped on such seals shall be the rule of payment for such cloth by the buyer; only such buyer (to discourage the sale of such cloth with the defective seals) shall deduct to himself, out of the price, double the value of so many yards or parts thereof, as the said cloth, or end, shall fall short in the length and breadth impressed on the former fraudulent seal, unless the maker or seller shall, within three days after notice of deficiency, accept the same again, and repay to the buyer all money received in payment for such cloth, together with such expences as he shall have been put unto, on account of such defective cloth. *s*. 5.

And in case any buyer or seller of cloth shall be dissatisfied with any admeasurement to be made by any such lastmentioned searcher, inspector or supervisor, and shall suspect the true length and breadth not to agree with the seal, then such buyer or

seller shall and may, within seven days after, give information thereof, before one justice (not being a dealer in woollen cloth) and every such searcher, inspector, or supervisor, having wilfully measured such cloth, and being convicted upon the oath of one witness, before any such justice, shall for such offence, forfeit, for the first inch in breadth, or half-yard in length that such cloth, or end, shall exceed or fall short of the measure marked on the seals, 20*s*. and in case such cloth, or end, shall exceed or fall short more than two inches in breadth, or one yard in length, of the measure marked, then such searcher, inspector, or supervisor, upon such conviction as aforesaid, shall forfeit his office, and be discharged therefrom by such justice, and shall from thenceforth be for ever disabled to exercise any office under the act. *s*. 6.

And if any person shall willingly take off, alter or counterfeit, deface or obliterate, or cut out any seal, or the figures, letters, and words thereon stamped, made or set, or therein woven or sewed, before the cloth be put in papers for the press, or into the frizing-mill; or if any inspector or supervisor shall find any woollen cloth after the times directed for sealing the same without the seal, or find such seal defaced, counterfeited or altered (except accidentally lost, or maliciously taken off): or shall find any such cloth, or end which shall appear by the seal last affixed, to be overstretched, or that the loom, mark, specifying the name and abode of the maker, shall be cut out or altered; in such case, every person so offending, or the merchant, dresser, clothier or owner in whose custody any such cloth shall be found, shall forfeit not exceeding 40*s*. nor less than 20*s*. *s*. 11.

Any person against whom any information shall be made by any merchant, buyer, seller, owner, or dresser of cloth for false sealing or stamping any cloth, may, within two days after notice of such information to him given, go to the house of such merchant, owner or dresser, and request to see the cloth, to examine whether the charge be just, and whether any frauds have been committed by the merchant, dresser or owner; and the merchant, dresser, buyer, or owner refusing to permit such offender to see or examine such cloth (unless put in papers for pressing, or sent to be frized), such prosecution shall cease, and any conviction thereupon shall be void; and in case of wilful refusal to shew such cloth, such merchant or buyer shall lose all benefit of deduction out of the price as aforesaid. *s*. 12.

Every owner of any tenter in the said west riding of *York*, shall measure such tenter, and mark in figures, plain and fair to be seen, the true length of yards (computing thirty-seven inches to each yard) of each tenter, beginning at number one, and o scontinuing it to the end thereof, marking each yard

distinctly, to be seen upon the top bar on the foreside, upon pain of 5*l.* for each tenter not numbered and marked. 5 *Geo.* 3. *c.* 51. *s* 22.

If any person shall stretch or strain any whole or long cloth, or end, or half-cloth, more than one yard (consisting of thirty-seven inches) in every twenty yards of the length thereof, and in the like proportion for cloths of greater or less length, or more than one inch in every twelve of the breadth thereof, beyond the length and breadth marked upon the stamp or seal thereon fixed by the searcher, supervisor, or inspector, who last measured the same, then every person so offending, convicted by the oath of one witness, before one justice as aforesaid, shall, for the first half-yard in length overstretched, forfeit 5*s.* and also for every quarter of a yard, above such half-yard, 10*s.* and for the first inch in breadth, 5*s.* and also for every inch above the first inch, 10*s.* 6 *Geo.* 3. *c.* 20. *s.* 15.

If any person shall use, in dressing of cloth, any cards made with wire, or with teeth of iron, or other metal, he shall forfeit 40*s.* 5 *Geo.* 3. *c.* 51. *s.* 23.

But it shall be lawful for any person in the striking or plaining of cloth, upon the tenters only, to use cards called *fine hatter's cards*, for the better laying the wool, and manufacturing the cloth, without being subject to such penalty. 6 *Geo.* 3. c. 23. *s.* 16.

Recovery of penalties.

All informations relating to any offences against this or the former act (except where otherwise provided for) shall be made within ten days after the offence discovered; and all offences shall be determined, and conviction thereon made, upon oath of one witness, by one justice (not a dealer in woollen cloth, nor occupier of a mill), notice being first given of the charge to the person therewith charged; and all penalties or forfeitures shall, after deducting the charges of conviction, go, one half to the person who shall give information, and the other half to the treasurer of the west riding; and such part as shall belong to the treasurer shall be received by the justice, and by him immediately paid to some inspector or supervisor; and such justice shall also, within three months after any conviction, send an account thereof to the said treasurer. *s.* 19.

And if any offender shall, for ten days, after convicted, and notice thereof to him given, at his dwelling-house, or last place of abode, refuse or neglect to pay any forfeiture by him incurred, by this or the said act, or shall not give notice of appeal; then, and not before, the justice before whom such conviction shall be made, or any other justice, upon a certificate of such conviction sent to him, may issue his warrant, to levy the same by distress; and where no distress can be found, he may commit the offender to the house of correction for not exceeding three months. *s.* 20.

But it shall be lawful for the treasurer to deduct the sums

forfeited by the searchers and measurers, inspectors and supervisors, out of their yearly salaries. 5 *Geo.* 3. *c.* 51. *s.* 16.

And persons aggrieved by any such determination may appeal to the next quarter sessions, which shall not be held within fourteen days after the cause of appeal shall arise, giving ten days notice to the party in whose favour such determination shall be made; and the quarter sessions may allow such costs as they think reasonable to either party, to be levied as is usual in cases of appeal from any order of the justices to the sessions, whose order herein shall be final. 6 *Geo.* 3. *c.* 23. *s.* 21.

And the justices before whom any conviction shall be made, as also the inspectors and supervisors, shall at the four general quarter sessions return to such sessions, an account in writing of all convictions within their knowledge; and of all penalties inflicted or levied, which are payable to the treasurer; and the said inspectors and supervisors shall pay to the treasurer, within three months after receipt thereof, all money by them received on account of such convictions; and every person neglecting or refusing to return such account, within twenty days next after any of the said sessions, or to pay such money, for three months next after receipt thereof, and being thereof convicted, upon the oath of one witness, before two justices (not being dealers in cloth, or occupiers of any fulling-mill), shall forfeit 10*l.* above the sums received. *s.* 22.

The treasurer of the west riding, out of the money received by him on account of the duties and forfeitures by these acts directed to be paid to him, shall, after payment of the expences of obtaining the acts, apply the said duties and penalties received, in payment of the salaries of the searchers, measurers, inspectors and supervisors, in such proportions, and manner, as the justices at their general quarter sessions, yearly, to be held next after *Midsummer*, shall direct. *s.* 24.

And the justices, after payment of the charges of obtaining the acts, shall at their general quarter sessions held next after *Midsummer*, yearly, make orders for the increasing or diminishing the rates to be paid for measuring, stamping and sealing, so as the same shall never exceed the rates before specified. *s.* 25.

Importation and exportation of woollen cloth.

9. *As to the importation or exportation of woollen cloth.*] The importation of woollen cloth, (except from the European dominions of the French king) though not positively, is circumstantially and in effect prohibited: for by 27 *Geo.* 3. *c.* 13. sched. A, *all manner of woollen cloths are subjected to a duty of customs upon the importation thereof*, of 1*l.* 17*s.* 5*d.* per yard *.

* Of which duty 1*l.* 13*s.* 1*d.* is to be drawn back on exportation.

But by the same act, s. 22, and sched. C, all *woollen manufactures*, including hosiery, of the European dominions of the French king, imported directly from thence, in ships, of the built of either country, are only to pay a duty of customs for every 100*l.* of the value thereof, of 12*l.*

And by 11 & 12 *Will.* 3. c. 20, woollen manufactures *shall be exported duty free*; except *white woollen cloth*, commonly called broad cloth, which by 27 *Geo.* 3. c. 13. is subject to a duty of customs upon the exportation thereof of 5*s.* 6*d.* the piece. But this duty having been originally imposed by 6 *Ann.* c. 8, in order to encourage the dressing or dyeing of cloth in this kingdom; it is enacted by 28 *Geo.* 3. c. 33, that such duty shall not be charged on any white woollen cloth, provided the same shall have been dyed or dressed in this kingdom. 3 *Hen.* 7. c. 11.

And no woollen cloth shall be exported, till it be barbed, rowed, and shorn, on pain of forfeiting the same, half to the king and half to him that will sue.

Woolcombers and their families, may set up trade in any place.

By 35 *Geo.* 3. c. 124, all such persons who have served an apprenticeship to the art, mystery, or trade of a wool-comber, or who are, by law, entitled to exercise the same, and also the wives and children of such woolcombers, may set up and exercise such trade, or any other trade or business which they are apt and able for, in any town or place within this kingdom, without any molestation; nor shall such woolcombers, or their wives or children, during the time they shall exercise such trades, be removeable from such place to their last legal settlement, until they shall become actually chargeable to such parish; and if any such woolcomber, or his wife or child, shall be sued for using any such trades, then the said woolcomber, or his wife or child, making it appear to the court that they have served a legal apprenticeship to a woolcomber, or that they be the wife or child of such woolcomber, shall, upon the general issue pleaded, be found not guilty; and such persons who, notwithstanding this act, shall prosecute the said suit by bill, plaint, information, or indictment, and shall have a verdict pass against him, or become nonsuit therein, or discontinue, shall pay unto such woolcomber, or his wife or child, double costs; and all judges and juries, and other persons whatsoever, are to take notice of this present act, and conform thereto. s. 1.

Justices may summon woolcombers to make oath of their legal settlement.

It shall be lawful for two justices, where any such woolcomber, or his wife or child, shall set up any trade, to cause him or her to be summoned before them in the town or place where they shall set up such trade, in order to make oath of the place of his or her last legal settlement, and they are to obey such summons and make oath accordingly; and such justices are to give an attested copy of such affidavit so made before them to the person making the same, in order that he or she may produce

it when required; which attested copy shall be admitted as evidence as to such legal settlement, at any general or quarter sessions: and in case any such woolcoomber, or his wife or child, shall again be summoned to make oath as aforesaid, then, on such attested copy of the oath formerly taken being produced, such woolcomber, or his wife or child, shall not be obliged to take any other oath with regard to their settlement, but shall leave a copy of such attested copy, if required. *s.* 2.

Act not to prejudice the universities.

This act shall not be prejudicial to the privileges of the universities of *Cambridge* and *Oxford;* or extend to give liberty to any person to set up the trade of a vintner, or to sell any wine or other liquors within the said universities without licence first had from the vice-chancellor. *s.* 3.

Prosecutions under certain acts relating to the woollen manufacture suspended.

Also by 43 *Geo.* 3. *c.* 136, and by 46 *Geo.* 3. *c.* 18, all prosecutions for penalties under the acts, 13 *Ric.* 2. *c.* 11. 5 & 6 *Ed.* 6. *c.* 6. 2 & 3 *Phil.* & *Mar.* *c.* 11. 3 *Phil.* & *Mar.* *c.* 12. 4 & 5 *Phil.* & *Mar.* *c.* 5. 43 *Eliz.* *c.* 20. 4 *Jac.* 1. *c.* 2. 21 *Jac.* 1. *c.* 18. 10 *Ann.* *c.* 16. 1 *Geo.* 1. *c.* 15. 13 *Geo.* 1. *c.* 23, relating to the woollen manufacture; and 5 *Eliz.* *c.* 4, as to the serving of an apprenticeship; are suspended until 25th March 1807, on account of its being doubted whether in the present improved state of the woollen manufacture, such rules, ordinances, orders and directions, restrictions, fines, penalties, forfeitures, and regulations, as are therein contained, ought to be continued, and the same being at present under the consideration of parliament.

Exceptions.

But this is not to be taken to suspend the clause in 5 *Eliz.* *c.* 4, except only as to persons setting up, occupying, using or exercising or setting any persons on work in the woollen manufacture or trade. 43 *Geo.* 3. *c.* 136. *s.* 2.

Also this act shall not extend to affect any proceedings touching the unlawful use of any *gigg mills.* *s.* 2.

## *XII. Cotton and woollen mills.*

Mills and factories subjected to this act.

By 42 *Geo.* 3. *c.* 73. all cotton and woollen mills and factories wherein three or more apprentices, or twenty or more other persons, shall at any time be employed, shall be subject to the regulations contained in this act; and the master or mistress of every such mill or factory is to act in strict conformity to the said regulations. *s.* 1.

White washing and airing rooms.

All the rooms and apartments in any such mill or factory shall, twice in every year, be washed with quick lime and water, over every part of the walls and ceiling; and due care shall be paid by the master or mistress to provide a sufficient number of windows to insure a proper supply of fresh air. *s.* 2.

Every such master or mistress shall constantly supply every apprentice, during the term of his apprenticeship, with two complete suits of clothing, with suitable linen, stockings, hats and shoes; one being delivered once in every year. *s.* 3. Clothing.

No apprentice shall be compelled to work for more than twelve hours in one day (from six in the morning to nine at night), exclusive of the time occupied in necessary meals: and no apprentice shall be compelled to work upon any occasion whatever, between nine at night and six in the morning. *s.* 4. Time of working.

Every apprentice shall be instructed, in some part of every working day, for the first four years of his apprenticeship, in the usual hours of work, in reading, writing, and arithmetic, according to the age and abilities of such apprentice, by some person, to be provided and paid by the master or mistress, in some room in such mill or factory to be set apart for that purpose; and the time allotted for such instruction shall be taken as part of the periods limited by this act during which such apprentice shall be compelled to work. *s.* 6. Apprentice to be instructed.

The apartment in which any male apprentice shall sleep, shall be separate from the apartment in which any female apprentice shall sleep; and not more than two apprentices shall sleep in the same bed. *s.* 7. Rooms of males and females to be separate.

Every apprentice, or (in case the apprentices shall attend in classes) every such class shall, for one hour at least every *Sunday*, be instructed in the principles of the christian religion, by some person to be provided and paid by the master or mistress; and in *England* and *Wales*, in case the parents shall be members of the church of *England*, such apprentices shall be taken, once in every year during the term of his apprenticeship, to be examined by the rector, vicar, or curate of the parish; and shall also, after such apprentice shall have attained the age of fourteen, and before attaining eighteen years, be prepared for confirmation, and be brought or sent to the bishop of the diocese to be confirmed: and in *Scotland*, where the parents shall be members of the established church, such apprentice shall be taken, once in every year, during the term of his apprenticeship, to be examined by the minister of the parish; and shall after he shall have attained the age of fourteen, and before attaining the age of eighteen years, be carried to the parish church to receive the sacrament, as administered in churches in *Scotland*; and such master or mistress shall send all his apprentices under the care of some proper person, once in a month, to attend during divine service in the church of the parish, or in some other convenient church or chapel where service shall be performed according to the rites of the church of *England*, or according to the established religion in *Scotland*, or in some licensed place of worship; and in case the apprentices cannot conveniently attend such church or chapel every *Sunday*, the master or mistress, Sundays.

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either by themselves or some proper person, shall cause divine service to be performed in some convenient place in or adjoining to the mill or factory, once every *Sunday* that such apprentices shall not be able to attend divine service; and such master or mistress is to take care that all his apprentices regularly attend divine service, according to this act. *s.* 8.

Justices at Midsummer sessions to appoint two visitors of mills.

The justices of the peace for every county in which any such mill or factory shall be situated, shall, at the *Midsummer* sessions immediately after 22d *June* 1802, and afterwards yearly at their annual *Midsummer* sessions of the peace, appoint two persons, not interested in, or in any way connected with, any such mills or factories, to be visitors of such mills or factories; one of whom shall be a justice of the peace, and the other a clergyman of the established church of *England* or *Scotland*, and in case it shall be found inconvenient to appoint one justice and one such clergyman, such justices are to appoint two justices or two clergymen; and the said visitors, or either of them, shall have full power to enter into and inspect any such mill or factory, at any time of the day, or during the hour of employment; and such visitors shall report from time to time in writing, to the quarter sessions, the state and condition of such mills and factories, and of the apprentices therein, and whether the same are regulated according to this act, and the laws of the realm; and such report shall be entered by the clerk of the peace among the records of the session; and in case there shall be six or more such mills or factories within one county, then it shall be lawful for such justices to divide such county into two or more districts, and to appoint two visitors as aforesaid for each. *s.* 9.

Visitors finding infectious diseases on inspection, to call in medical assistance at the costs of the master.

In case the said visitors or either of them shall find that any infectious disorder appears to prevail in any mill or factory, they may require the master or mistress to call in some physician, or other medical person, for the purpose of ascertaining the nature and probable effects of such disorder, and for applying such remedies and recommending such regulations as the said physician, or medical person, shall think most proper for preventing the spreading of the infection, and for restoring the health of the sick; and such physician, or medical person, shall report to such visitors their opinion in writing of the nature, progress, and present state of the disorder, together with its probable effects; and the expences shall be discharged by the master or mistress. *s.* 10.

Penalty on opposing inspectors.

If any person shall oppose or molest any of the said visitors, such person shall forfeit not exceeding 10*l.* nor less than 5*l.* *s.* 11.

Masters to cause copies of the act to be affixed in the mill.

The master or mistress of every such mill or factory shall cause printed or written copies of this act to be hung up in two conspicuous places in such mill or factory, and shall cause the same to be constantly kept and renewed, so that

they may at all times be legible to all persons employed. *s.* 12.

Every master or mistress who shall act contrary to, or offend against any of the provisions of this act, shall (except where otherwise directed) forfeit not exceeding 5*l.* nor less than 40*s.* at the discretion of the justices; one half whereof shall be paid to the informer, and the other half to the overseers of the poor in *England* and *Ireland*, and to the ministers and elders in *Scotland*, of the parish, to be by them applied in aid of the poor-rate in *England* and *Ireland*, and for the befit of the poor in *Scotland*: but all informations for offences against this act, shall be laid within one calendar month after the offence. *s.* 13. Penalties on masters offending.

Every such master or mistress shall, at the *Epiphany* sessions in every year, make an entry in a book to be kept for that purpose by the clerk of the peace, of every mill or factory occupied by him or her, wherein three or more apprentices or twenty or more other persons shall be employed; and the clerk of the peace shall receive for such entry 2*s.* *s.* 14. Masters to enter their mills at every Epiphany sessions.

All offences for which any penalty is imposed may be heard before two justices of the peace; and all penalties by this act imposed, and all costs and charges attending the conviction of any offender, shall be levied by distress and sale of the offender's goods, by warrant under the hand and seal of two justices of the peace, rendering the overplus (if any) to the party offending; and which warrant such justices are to grant, upon conviction of the offender, either by confession, or upon the oath of one witness, and in case such distress cannot be found, and such penalties and costs shall not be forthwith paid, such justices are by warrant under their hands and seals, to commit such offender to the common gaol or house of correction for not exceeding two calendar months, unless the said penalty and costs shall be sooner paid; but no warrant of distress shall be issued for levying any such penalty, or costs, until six days after the offender shall have been convicted, and an order made upon him for payment thereof; and no such conviction shall be removeable by *certiorari*, or bill of advocation. *s.* 15. Recovery and application of penalties.

Such conviction may be made in the following form; to wit,

'County of —— } *Be it remembered, That on the* —— *day*
'to wit. } *of* —— *in the year* —— A. B. *was, on*
'*the complaint of* C. D., *convicted before* —— *of the justices*
'*of the peace for the county of* —— [or, *for* —— *of or*
'*in the said county of* —— as the case shall happen to be],
'*in pursuance of an act passed in the Forty-second year of*
'*the reign of his majesty King* George *the Third*, *for* [*or*, as
'the case may be]. *Given under our hands and seals, the*
*day and year above written.*'

Which conviction shall be certified to the next general quarter sessions. *s.* 16.

For the laws to prevent the exportation of live sheep and wool, see title *SMUGGLING*, cap. ii. *s.* 2. *Wool.*
——— to prevent the importation of foreign wool cards, see the same title, cap. ii. *s.* 1. *Wool Cards.*
——— to prevent the exportation of wool cards, see also the same title, cap. ii. *s.* 2. *Tools used in the manufactures of this kingdom.*
——— to prevent the burial of bodies in any thing other than woollen, see title *BURIALS.*
For the offence of breaking into woollen and other manufactories, see title *FELONY, without clergy.*

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## MANUFACTURERS.

I. *The offence of seducing artificers to leave the kingdom.*

II. *Combinations among artificers in general.*

III. *Combinations among workmen and others, employed in the making of hats, or in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures.*

IV. *Combinations among journeymen paper makers.*

V. *Frauds and embezzlements by workmen and others employed in the woollen manufacture in particular.*

VI. *Frauds and embezzlements by workmen and others employed in the making of hats, or in the woollen, linen, fustian,*

*cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures.*

VII. *Frauds and embezzlements by persons employed in the business of clock-making or watch-making.*

VIII. *Frauds and embezzlements by person employed in the leathern manufactures.*

IX. *Frauds and embezzlements by persons employed in the silk manufactures.*

X. *Misbehaviour by frame-work knitters.*

XI. *Payment of manufacturers wages.*

XII. *Settling disputes by arbitration.*

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### I. *The offence of seducing artificers to leave the kingdom.*

BY 5 *Geo.* 1. *c.* 27, If any person shall contract with, entice or solicit, any artificer in *wool, iron, steel, brass or other metal, clock-maker, watch-maker,* OR ANY OTHER ARTIFICER of *Great Britain,* to go into foreign countries out of the king's dominions, and shall be convicted thereof, upon indictment or information, in any of the courts at *Westminster,* or at the assizes or quarter sessions, he shall be fined any sum not exceeding 100*l.* for the first offence, and shall be imprisoned three months, and till the fine be paid; and if any person having been once convicted shall offend again, he shall be fined at the discretion of the court, and imprisoned twelve months, and till the fine be paid *. *s.* 1.

But no person shall be prosecuted for the said offences, unless the prosecution be begun within twelve months after the offence. *s.* 2.

And if any of the king's subjects, being such artificers, shall

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* But this clause seems to be repealed by the subsequent act of 23 *Geo.* 2. *c.* 13. See the case of *The K.* v. *Cator,* infra.

go into any country out of his majesty's dominions, to exercise or teach the said trades to foreigners; and if any of the king's subjects in any such foreign country, exercising of the said trades, shall not return into this realm within six months after warning given by the ambassador, envoy, resident, minister or consul, of *Great Britain*, in the country where such artificers shall be, or by any person authorized by such minister, or by one of the secretaries of state, and from thenceforth inhabit within this realm, such person shall be incapable of taking any legacy, or of being an executor or administrator, or of taking any lands, tenements or hereditaments within this kingdom, by descent, devise or purchase, and shall forfeit all his estates real and personal to his majesty's use, be deemed an alien, and out of the king's protection. *s.* 3.

And on complaint on oath before one justice of the peace, that any person is endeavouring to seduce any such artificer, or that any such artificer hath contracted or is preparing to go out of the kingdom, for the purposes aforesaid, such justice may send his warrant to bring the person complained of before him or some other justice: and if it shall appear by the oath of one witness, or by confession, that he was guilty of any the said offences, such justice may bind him to appear at the next assize or quarter sessions; and if such person shall refuse to give security, the justice may commit him to gaol till the next assizes or quarter-sessions, and until he shall be delivered by due course of law; and if any such artificer shall be convicted upon indictment of any such promise, contract, or preparation, to go beyond the seas for the purpose aforesaid, he shall give such security to the king, not to depart out of the realm, as such court shall think reasonable, and be imprisoned until such security be given. *s.* 4.

And the act 23 *Geo.* 2. c. 13, after reciting *that divers persons, notwithstanding the penalties of the above act, had seduced into foreign parts several artificers in the woollen and other manufactures, and that it was become necessary to make some further and more effectual provision, to deter such persons from committing the said offences so destructive to the trade of this kingdom*, ENACTS, that if any person shall contract with, entice, persuade, or endeavour to seduce any artificer in *wool, mohair, cotton, or silk, or in iron, steel, brass, or other metal, or any clock-maker, watch-maker, or any other artificer in any other of the manufactures of Great Britain* to go out of this kingdom into any foreign country not within the dominions of the crown of *Great Britain*, and shall be convicted upon indictment or information in the *King's Bench*, or by indictment at the assizes, or general gaol delivery for the county wherein such offence shall be committed, the person so convicted shall, for every artificer contracted with or seduced, forfeit 500*l.* and shall suffer imprisonment in the common gaol where convicted,

for twelve calendar months, and until such forfeiture be paid: and in case of a subsequent offence, the person again offending shall forfeit for every person contracted with or seduced 1000*l.* and suffer imprisonment in the common gaol where convicted for two years, and until such forfeiture be paid. *s.* 1.

But no person shall be prosecuted unless such prosecution be commenced within twelve calendar months. *s.* 2.

In the case of *The K.* v. *Edward Cator*, *Hil. Term*, 7 *Geo.* 3, where the defendant had been convicted of enticing and seducing artificers in the manufactures of this kingdom into foreign service, an offence within *both* of the above acts, Lord *Mansfield* said, that the latter act *seemed* to be a repeal of the former*, being made to supply the deficiencies of the former. And Mr. justice *Aston* observed—that by the latter act there is no discretion left in the court; the punishment directed in it being peremptory, and not as in the former act, which directs the fine for the first offence to be in any sum *not exceeding* 100*l.*—THE SENTENCE in this case was therefore to pay a fine of 500*l.* and to be imprisoned in the county gaol of the county of *Middlesex* for twelve calendar months, and until the fine be paid. 4 *Burrow's Rep.* 2026.

Also by 22 *Geo.* 3. *c.* 60, If any person shall contract with, entice, persuade, or endeavour to seduce or encourage *any artificer or workman concerned or employed, or who shall have worked at or been employed in printing calicoes, cottons, muslins, or linens of any sort, or in making or preparing any blocks, plates, engines, tools, or utensils, for such manufactures*, to go out of *Great Britain* to parts beyond the seas, and shall thereof be convicted [*in like manner as is mentioned in the above act of* 23 Geo. 2.], he shall for every artificer forfeit 500*l.* and be committed to the common gaol for twelve calendar months, and until such forfeiture be paid; and in case of a subsequent offence he shall forfeit for every artificer, 1000*l.* and be committed for two years, and until such forfeitures be paid. *s.* 1.

But the prosecution must be commenced within twelve calendar months. *s.* 2.

And finally by 25 *Geo.* 3. *c.* 67, if any person shall contract with, entice, persuade, or endeavour to seduce or encourage *any artificer or workman employed or who shall have been employed in the iron or steel manufactures in this kingdom, or in making or preparing any tools or utensils for such manufactures*, to go out of *Great Britain* to parts beyond the seas (except *Ireland*), and shall be convicted thereof [*in manner above*], he shall for every artificer forfeit 500*l.* and be committed to the common gaol for twelve calendar months, and until such forfeiture be paid; and in case of a subsequent of-

* This must however be understood of the first section only.

offence, he shall forfeit 1000*l.* for every artificer, and be committed for two years, and until such forfeiture be paid. *s.* 6.

But the prosecution must be commenced within twelve calendar months. *s.* 7.

### *II. Combinations among artificers in general.*

By the statute 2 & 3 *Ed.* 6. *c.* 15, it is enacted, that if any artificers, workmen, or labourers do conspire, covenant, or promise together, or make any oaths, that they shall not make or do the works but at a certain price or rate, or shall not enterprise or take upon them to finish what another hath begun, or shall do but a certain work in a day, or shall not work but at certain hours and times; such persons being convict at the assizes, sessions, or court leet, shall forfeit for the first offence 10*l.* to the king, and if he pay not the same within six days, shall suffer twenty days imprisonment, and shall have only bread and water for his sustenance; for the second offence 20*l.* or if not paid within six days, pillory; and for the third offence 40*l.* or if not paid in six days, pillóry, loss of one ear, and to be deemed infamous.

And as all confederacies of this nature are highly criminal at common law, journeymen confederating and refusing to work unless for certain wages or the like, may be indicted for a conspiracy and punished accordingly*; and this, notwithstanding the statutes which regulate their work and wages do not direct such a mode of prosecution; for the offence consists in the conspiring, and not in the refusal; and a conspiracy of any kind is illegal, though the matter about which they conspired may be lawful for them to do, if they do not conspire to do it. 8 *Mod. Rep.* 10.

And all such offences may be inquired of and punished by justices of peace, by indictment (I) in sessions; for a conspiracy is a *trespass*†, and tends to a breach of the peace. 3 *Burrow's Rep.* 1321.

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* See title CONSPIRACY.

† See the justice's power by the words of their commission in regard to *trespasses*, and an exposition of the meaning of the term *trespass*, in p. 130 supra.

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(I) The form of an indictment at common law for a conspiracy among workmen to raise their wages and lessen the time of labour.

Monmouthshire. } *The jurors for our lord the king upon their oath present, that* A B, *late of*, &c. C D, *late of*, &c. *and* W S, *late of*, &c. *on the fifth day of* October, *in the* —— *year of the reign of our sovereign lord* George *the Third now*

And now by the *stat.* 39 & 40 *Geo.* 3. *c.* 106, the following general legislative provisions have been made to prevent combinations amongst manufacturers and servants employed in trade.

How restrained by statute.

All contracts, covenants, and agreements whatsoever in writing, or not in writing, entered into between any journeyman manufacturers or other persons within this kingdom—for obtaining an advance of wages in any *manufacture, trade, or business*—or for lessening or altering their usual hours of working—or for decreasing the quantity of work, except any contract made between any master and his journeyman or manufacturer, for the work or service of such journeyman or manufacturer—or for preventing any person from employing whomsoever he shall think proper—or for controlling or any way affecting any person carrying on

All combinations amongst journeymen declared illegal.

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*king of* Great Britain, *&c. being workmen and journeymen in the art, mystery, and manual occcupation of a wheelwright, and not being content to work and labour in that art and mystery by the usual number of hours in each day, and at the usual rates and prices, for which they and other workmen and journeymen were wont and accustomed to work, but falsely and fraudulently conspiring and combining, unjustly and oppressively, to increase and augment the wages of themselves and other workmen and journeymen in the said art, and unjustly to exact and extort great sums of money for their labour and hire, in their said art, mystery and manual occupation, from the masters who employ them therein, on the same day and year, at the parish aforesaid, in the county aforesaid, together with divers other workmen and journeymen in the same art, mystery and manual occupation, unlawfully did assemble and meet together, and so being assembled and met, did then and there unjustly and corruptly conspire, combine and agree among themselves, that none of the said conspirators, after the same ——— day of ———, would work at any lower or lesser rate than five shillings for hewing of every hundred of spokes for wheels, and eight shillings for making of every pair of hinder wheels; and also that none of the said conspirators would work day-work, or labour any longer than from the hour of six in the morning till the hour of seven in the evening, in each day, to the great damage and oppression, not only of their masters employing them in the said art, mystery, and manual occupation, but also of divers others of his majesty's liege subjects *; to the evil example of all others in the like case offending, and against the peace of our said lord the king his crown and dignity.*

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* By inserting in this place the words *against the form of the statute in that case made and provided*, the indictment will hold good on the statute.

any manufacture, trade, or business, in the conduct or management thereof, shall be illegal, null, and void. 39 & 40 *Geo.* 3. c. 106. *s.* 1.

Journeymen offending to be committed.

And no journeyman, workman, or other person, shall enter into any such contract, covenant, or agreement *, in writing or not in writing; and every journeyman and workman, or other person, who shall be guilty of any of the said offences, being thereof convicted upon his own confession, or the oath of one witness, before two justices within three calendar months, shall, by order of such justices, be committed to the common gaol for not exceeding three calendar months; or at the discretion of such justices shall be committed to some house of correction, there to remain and be kept to hard labour for not exceeding two calendar months. *s.* 2.

Journeymen entering into such combinations, how punished.

And every journeyman or workman, or other person, who shall enter into any combination to obtain an advance of wages —or to lessen or alter the hours of the time of working—or to decrease the quantity of work—or for any other purpose contrary to this act—or who shall, by giving money, or by persuasion, solicitation, or intimidation, or any other means, wilfully endeavour to prevent any unhired journeyman, or workman, or other person, in any manufacture, trade, or business, or any other person wanting employment in such manufacture, trade or business, from hiring himself to any manufacturer, or tradesman, or person conducting any manufacture, trade, or business—or who shall, for the purpose of obtaining an advance of wages, or for any other purpose contrary to this act, wilfully decoy, persuade, solicit, intimidate, influence, or prevail, or attempt to prevail, on any journeyman, or workman, or other person, to quit or leave his work, service, or employment, or who shall wilfully hinder any manufacturer or tradesman, or other person, from employing in his manufacture, trade, or business, such journeymen, workmen, and other persons as he shall think proper—or who, being hired, shall without any just cause, refuse to work with any other journeyman or workman employed therein, and who shall be convicted of any of the said offences, upon his own confession, or the oath of one witness before two justices, within three calendar months, shall be committed to the common gaol for not exceeding three calendar months; or otherwise be committed to some house of correction, there to remain and be kept to hard labour for not exceeding two calendar months. *s.* 3.

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* In a conviction on this clause for entering into an illicit agreement, it is not sufficient to state in general terms that it was entered into *for the purpose of controling the master*, but it must state what the agreement was, that the court may see whether it is an agreement for controling the masters in their trade, within the meaning of the statute, otherwise it will be bad. *Rex* v. *Nield and others, Ea.* 45 *Geo.* 3. 6 *East's Rep.* 417. 2 *Smith's Rep.* 418.

And all persons whomsoever (whether employed in any manufacture, trade, or business, or not) who shall attend any meeting for the purpose of entering into any contract, covenant or agreement, by this act declared illegal, or of entering into or carrying on any combination for any purpose declared to be illegal, or who shall summons, give notice to, call upon, persuade entice, solicit, or by intimidation, or any other means, endeavour to induce any journeyman, workman, or other person employed to attend any such meeting, or who shall collect, demand, ask, or receive any sum of money from any person for any of the purposes aforesaid, or who shall persuade, entice, solicit, or by intimidation, or any other means, endeavour to induce any such journeyman, workman, or other person, to enter into any such combination, or who shall pay any sum, or make any subscription or contribution for the support or encouragement of any such illegal meeting or combination, and who shall be convicted upon his own confession, or the oath of one witness, before two justices, within three calendar months, shall be committed to the common gaol for not exceeding three calendar months; or otherwise be committed to some house of correction, there to remain and be kept to hard labour for not exceeding two calendar months. *s.* 4. Attending or enticing others to attend illegal meetings.

No person (whether a journeyman or workman or not) shall at any time wilfully pay any sum as a subscription for the purpose of paying expences incurred or to be incurred by any person acting contrary to this act, [or] by payment of money or other means, support any journeyman, workman, or other person, or contribute towards his support, for the purpose of inducing him to refuse to work, or to be hired; and every person who shall be guilty of any such offence shall forfeit not exceeding 10*l.* and every journeyman, workman, and other person who shall collect any money or valuable thing for any of the purposes aforesaid, shall forfeit not exceeding 5*l.* such penalties of 10*l.* and 5*l.* to be forfeited, one moiety to his majesty, and the other to the informer and poor of the parish, to be equally divided between them; and the said offences shall be heard and determined before two justices, and the conviction may be made upon the oath of one witness, and the amount of the forfeiture shall be fixed by such justices, but not exceeding the sums before mentioned; and in case any such forfeiture shall not be forthwith paid, such justices shall cause the same to be levied by distress and sale, together with all costs attending such distress and sale; and in case no sufficient distress can be had, such justices shall commit the offender to the common gaol for not exceeding three, nor less than two calendar months; or otherwise to some house of correction, there to remain and be kept to hard labour for not exceeding two calendar months. *s.* 5. Contributing to maintain journeymen, or inducing them not to work, or collecting money for that purpose.

All sums which shall be paid as a subscription towards any

Contributions for illegal purposes forfeited.

of the persons prohibited, shall be forfeited, one moiety to his majesty, and the other to such person as will sue for the same in any court of record at *Westminster*, and the person in whose hands, or in whose name, any such sum shall be, may be sued for the same. *s.* 6.

And may be enquired after by bill in equity.

And all persons liable to be sued for the same shall be obliged to answer upon oath to any information preferred against them in any court of equity, in the name of the attorney-general, or at the relation of any informer; and such court shall make such orders and decrees as to such court shall seem just; and no person shall demur to or refuse to answer such information by reason of any penalty to which such person may be liable. *s.* 7.

But upon payment of the money into court, the party to be discharged from any penalty.

But upon payment into the court in which such information shall be filed of all the money paid unto any such person, and remaining in his hands, and upon making a full discovery of all the securities upon which all such money shall have been placed, the person paying such money and making such discovery shall be discharged from all penalties incurred by him, and from all actions and other suits respecting the same by any person whomsoever, nor shall any person be liable to any penalty, or to any prosecution for any sum of money which such person shall discover to have been paid by any answer to any such information. *s.* 8.

Offenders compellable to give evidence.

All persons who shall offend against this act, shall, equally with all other persons, be compelled to give evidence as witnesses on behalf of his majesty, or of the prosecutor, upon any information exhibited under this act against any other person, not being such witness; and in all such cases every person having given his evidence as aforesaid, shall be indemnified against any information for having offended in the matter wherein he shall have given evidence. *s.* 9.

Justices may summon offenders, and determine disputes.

On complaint on oath before one justice, of any offence having been committed, such justice is to summon the offender, to appear before any two justices at a certain time or place; and if any person so summoned shall not appear, then such justices (proof on oath having been first made before them of the due service of such summons upon such person, by delivering the same to him personally, or leaving the same at his place of abode, provided the same shall be so left twenty-four hours at the least before the time appointed to attend the said justices) shall issue their warrant for apprehending the person summoned and not appearing, and bringing him before such justices; or it shall be lawful for such justices, if they think fit, without issuing any previous summons, upon such complaint on oath as aforesaid, to issue their warrant for apprehending the person charged to have offended, and bring him before such justices; and upon the person complained against appearing upon such summons, or being brought by virtue of such warrant before

such justices, or upon proof on oath of such person absconding, so that such warrant cannot be executed, then such justices shall make enquiry touching the matters complained of, and examine into the same by oath, and hear and determine the matter; and upon confession by the party, or proof by one witness upon oath, convict or acquit the party against whom complaint shall have been made. *s.* 10.

The justices before whom any such complaint shall be made, are, at the request in writing of any of the parties, to issue their summons to any witness; and if any person summoned to appear as a witness shall not appear before such justices, at the time and place specified in such summons, or offer some reasonable excuse for the default, or appearing, shall not submit to be examined, then such justices are (proof on oath, in the case of any person not appearing, having been first made of the due service of such summons, by delivering the same to the party, or by leaving the same twenty-four hours before the time appointed for such person to appear, at the usual place of abode of such person) to commit (I) such person making default in appearing, or appearing and refusing to give evi- Witnesses.

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(I) Form of commitment of a person summoned as a witness. 39 & 40 *Geo.* 3. *c.* 106. *s.* 12.

*Whereas* C D *hath been duly summoned to appear and give evidence before us* [*naming the justices who issued the summons*], *two of his majesty's justices of the peace for the county* [or *riding, division, city, liberty, town,* or *place*] *of* ——— *on this* ——— *day of* ——— *at* ——— *being the time and place appointed for hearing and determining the complaint made on the oath of* [*the informer or prosecutor*] *before us, against* A B *of having* [*stating the offence as laid in the information*] *contrary to the statute made in the thirty-ninth and fortieth years of the reign of his present majesty, intituled, An act* [*here insert the title of the act*] *: and whereas the said* C D *hath not appeared before us at the time and place aforesaid specified for that purpose, or offered any reasonable excuse for his* [or *her*] *default* [or, *And whereas the said* C D, *having appeared before us at the time and place aforesaid specified for that purpose, hath not submitted to be examined as a witness, and give his* (or *her*) *evidence before us touching the matter of the said complaint, but hath refused so to do*] : *therefore we the said justices do hereby, in pursuance of the said statute, commit the said* C D *to the* [*describing the prison*], *there to remain without bail or mainprise, for his* [or *her*] *contempt aforesaid, until he* [or *she*] *shall submit himself* [or *herself*] *to be examined and give his* [or *her*] *evidence before us touching the matter of the said complaint, or shall otherwise be discharged by due course of*

dence, to some prison, there to remain without bail or mainprize, until such person shall summit to be examined. *s.* 11.

The justices shall cause all convictions (II) and warrants or orders for commitment (III) to be drawn up in the form in the first schedule. *s.* 12. & 41 *Geo.* 3. *sess.* 2. *c.* 38.

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*law; and you* [*the constable* or *other peace officer or officers to whom the warrant is directed*] *are hereby authorized and required to take into your custody the body of the said* C D, *and him* [or *her*] *safely to convey to the said prison, and him* [or *her*] *there to deliver to the gaoler or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said* C D, *and him* [or *her*] *safely to detain and keep, pursuant to this commitment. Given under our hands this* ——— *day of* ——— ——— *in the year of our Lord* ——— ———

[This commitment to be directed to the proper peace officer, and the gaoler or keeper of the prison.

(II) Form of conviction and commitment.

*Be it remembered, That on the* ——— *day of* ——— *in the* ——— *year of his majesty's reign, and in the year of our Lord* ——— ——— A B, *is convicted before us* [*naming the justices*], *two of his majesty's justices of the peace for the county* [or *riding, division, city, liberty, town,* or *place*] *of* ——— ——— *of having* [*stating the offence*], *contrary to the statute made in the thirty-ninth and fortieth years of the reign of his present majesty, intituled "An act to repeal an act passed in the last sessions of parliament, intituled, 'An act to prevent unlawful combinations of workmen,' and to substitute other provisions in lieu thereof;" and we the said justices do hereby order and adjudge the said* A B *for the said offence, to be committed to and confined in the common gaol for the said county* [or *riding, division, city, liberty, town,* or *place*] *for the space of* ——— [or *to be committed to the house of correction at* ——— *within the said county* [or *riding, division, city, liberty, town,* or *place*], *there to be kept to hard labour for the space of* ——— ———

*Given under our hands, the year and day above written.*

(III) Form of a conviction in a pecuniary penalty.

*Be it remembered, That on* [*pursuing the same form as far as the title of the said recited act*]: *and we the said justices do hereby adjudge and determine the said* A B *for the said offence, to forfeit and lose the sum of* ——— ——— *of lawful money of* Great Britain, *to be distributed as the said act directs.*

*Given under* [*as before*].

The justices before whom any such conviction shall be had, shall cause the same to be written on parchment, and transmitted to the next general sessions, or general quarter sessions, and in case any person shall appeal from the judgment of the justices, the sessions are, upon receiving such conviction, to proceed to the hearing of the appeal. *s.* 13.

Power of former acts to remain force.

Nothing in this act shall repeal, take away, or abridge the powers given to any justices by an act now in force touching any combinations of manufacturers, journeymen, or workmen, or for settling disputes between masters and their journeymen, or workmen, or other persons employed in any manufactures, trades, or business, or the rate of wages to be paid to such persons, or the mode or time of their working, or the quantity of work to be done, or touching any matter whatsoever also provided for by this act; but all justices of the peace shall continue to execute all the powers given to them by such acts, in the same manner as they could if this act had not been made. *s.* 14.

Not to empower manufacturers to employ workmen contrary to acts in force.

Also this act shall not empower any person carrying on any manufacture, trade, or business, to employ therein any workman contrary to the regulations contained in any act of parliament now in force, for directing the manner of conducting, managing, or carrying on any particular manufacture, trade, or business, or the work of the persons employed therein, without the previous licence in writing of one justice expressing the cause of giving the same; which licence one justice may grant whenever the qualified workmen usually employed shall refuse to work for reasonable wages, or to work for any particular person, or to work with any particular persons, or shall, by refusing to work for any cause whatsoever, or by misconducting themselves when employed, in any manner impede or obstruct the ordinary course of any manufacture, trade, or business, or endeavour to injure the person carrying on the same. *s.* 16.

No master to act as a justice.

No justice, being also a master in the particular trade or manufacture concerning which any offence is charged to have been committed, shall act as such justice under this act. *s.* 15.

COMBINATIONS BETWEEN MASTERS and others for reducing wages, or altering hours or manner of working.

All contracts whatsoever, in writing or not in writing, made between any masters or other persons, for reducing the wages of workmen, or for adding to or altering the usual hours of working, or for increasing the quantity of work, shall be illegal, null, and void; and all masters being thereof convicted by the oath of one witness, before two justices, within three calendar months, shall forfeit 20*l.* one moiety to his majesty, and the other in equal shares to the informer and the poor of the parish; and in case such forfeiture shall not be forthwith paid, such justices shall cause the same to be levied by distress and sale, together with all costs attending such distress and sale; and in case no sufficient distress can be had, such justices

shall commit the offender to the common gaol, or some house of correction, for not exceeding three nor less than two calendar months. *s.* 17.

Appeal.

If any person convicted of any offence punishable by this act shall think himself aggrieved, such person may appeal to the next general sessions, or general quarter sessions, and the execution of every judgment so appealed from shall be suspended in case the person convicted shall immediately enter into a recognizance before such justices, himself in the penalty of 10*l.* with two sufficient sureties in 5*l.* each, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment of the sessions, and to pay such costs as the said court shall award; and the justices in the said next court of general sessions, or general quarter sessions, are to hear and determine the appeal, and to award such costs as to them shall appear just, which decision shall be final; and if, upon hearing the appeal, the judgment of the justices before whom the appellant shall have been convicted, shall be affirmed, such appellant shall forthwith pay the forfeiture (if any) and the costs awarded to be paid; and in default of payment thereof, or in case such conviction shall contain a judgment of imprisonment, such appellant shall immediately be committed by the said court to the common gaol or house of correction, according to such conviction, and for the space of time therein mentioned, without bail or mainprize, and also until the costs awarded by the same court be paid. *s.* 23.

*III. Combinations amongst workmen, and others employed in the making of hats, or in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures.*

By the 12 *Geo.* 1. c. 34, all contracts, by-laws or orders, in unlawful clubs and societies, made by or between persons brought up in or exercising the art of a wool-comber or weaver, or journeyman wool-comber, or journeyman weaver—(*or by or between any journeymen dyers, journeymen hot-pressers, or any other persons employed in any of the woollen manufactures; or any journeyman or other persons employed in the making of felts or hats, or in any of the manufactures of silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron or leather, or any of the said materials mixed one with another, 22 Geo.* 2. *c.* 27. *s.* 12.) for regulating the said trade, or for settling the prices of goods, or for advancing their wages, or for lessening their usual hours of work, are declared to be illegal and void; and if any such persons shall keep up, sign, or be knowingly concerned in, any contract, by-law or order of any club or combination by this act declared to be illegal, or shall attempt to put any such illegal act in execution, the offender being convicted on the oath of one witness be-

fore two justices of peace upon any prosecution, within three calendar months after the offence, shall by order of such justices be committed either to the house of correction, to be kept to hard labour for not exceeding three months, or to the common gaol of the county, there to remain for not exceeding three months. *s.* 1.

But it shall be lawful for any person aggrieved by any order of the two justices, to appeal * to the next quarter sessions, giving notice of such appeal; and if it shall appear that reasonable notice was not given, they shall adjourn the appeal to the next quarter sessions, and they shall have power to award costs. *s.* 5.

And as to HATTERS, it is further enacted, by 17 *Geo.* 3. *c.* 55, that if any journeyman hatter, hat-maker, piece-master, servant, workman, or other person, employed in making or finishing of hats or felts, in any branch thereof, shall be convicted as above, of having kept up, acted, in, made, entered into, signed, sealed, or having been knowingly concerned in, any contract, covenant or agreement, by-law, ordinance, rule, or order of any club, or combination, by the said act declared to be illegal; or of presuming or attempting to put any such illegal act in execution, or of departing from his service before the end of the time for which he was hired; or of quitting or returning his work before the same shall be finished according to agreement; or of wilfully spoiling or destroying any goods or work, such person so convicted, before he shall be entitled to appeal to the quarter-sessions against such conviction, or before the proceedings shall be so suspended, shall enter into recognizance with two sureties, the principal in the sum of ten pounds, and the two sureties in five pounds each, before one justice, for the appearance of the person convicted at such sessions to prosecute such appeal, and abide the determination of such sessions; and the said general quarter sessions are to hear and finally determine the appeal, and award costs to either party: and if upon the hearing such appeal the judgment shall be affirmed, such appellant shall immediately be committed to the common gaol or house of correction, in pursuance of the original order of conviction, there to remain for the time which shall have been ordered, and until the appellant shall pay the costs awarded against him by the sessions. *s.* 3.

And if any person whomsoever, whether employed in the said trade or not, shall attend any meeting, club, society or combination, by the said act declared illegal; or shall summons or call upon any journeyman hatter, or other person employed in

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* And for the conditions now required by 17 *Geo.* 3. *c.* 56, upon such appeal, see the 20th section of that act, at the end of div. v. of this title.

the said trade, to attend such meeting, or to pay any money as a fine, contribution, or subscription, for the use of such meeting; or who shall collect, demand, or receive, any sum of money from any journeyman hatter, for any of the above purposes; or shall persuade, entice, inveigle, or intimidate, or endeavour to persuade, &c. any journeymen hatter, &c. to enter into, or be concerned in any such meeting, or to turn out against or quit the service of the master; or if any person shall pay any money, or make or enter into any subscription towards the support or encouragement of such illegal meetings, such person being convicted before two justices, on the oath of one witness, shall, for every such offence, be committed to the common gaol or house of correction, there to remain without bail, for not exceeding three months. *s.* 4.

**Master hatters to employ one journeyman.**

Every master hat-maker shall employ one journeyman for every apprentice he shall employ in hat making, provided a sufficient number of journeymen hatters, who have served as apprentices to the said trade, offer themselves for their employment: or in default thereof, he shall for ever thereafter be disabled from taking more than two apprentices to the said trade. *s.* 2.

And so much of 5 *Eliz. c.* 4, as extends to restrain any person from setting up and exercising the craft of a master hat-maker unless brought up as apprentice therein is repealed. *s.* 5.

But no master hat-maker shall be capable of acting as a justice of peace in the execution of any act relative to the punishment of any journeyman hat-maker, or apprentice. *s.* 6.

And any person convicted before one or more justices of any offence in this act mentioned may appeal to the next general or quarter sessions, giving immediate notice of such appeal, and finding security to the satisfaction of the justices being present at such sessions, and for prosecuting the appeal with effect, and abiding the judgment of the court; and such sessions shall finally determine the matter, and shall have power to award costs to either party; and if such conviction shall be affirmed, such appellant shall be committed to the common gaol or house of correction for not exceeding three months. *s.* 8.

And by the said act, 12 *Geo.* 1. *c.* 34, which is extended by the 22 *Geo.* 2. *c.* 27. *s.* 12. *to journeymen dyers, journeymen hat dressers, and all other persons employed in any of the woollen manufactures, and also to journeymen and all other persons, employed in the making of felts or hats, or in any of the manufactures of silk, mohair, fur, hemp, flax, linen, cotton, fustian, irons or leather, or any of the said materials mixed one with another*; if any person shall assault any master wool-comber, or master-weaver, or other person concerned in the woollen or other manufactures abovementioned, whereby such master shall receive any bodily hurt, for not complying with any such illegal by-laws, &c.; or if any person shall write or send

**Assaulting master for not complying with illegal combinations felony, and transportation for seven years.**

any letter or message threatening hurt to any such master, &c. or to burn or destroy their houses, or to cut down their trees, or to maim or kill their cattle, for not complying with any demands of his workmen, or for not submitting to any such illegal by-laws, &c.; every person knowingly and wilfully offending in the premises, being convicted upon an indictment to be found within twelve calendar months after such offence committed, shall be guilty of felony, and shall be transported for seven years. *s.* 6.

And by 12 *Geo.* 3. *c.* 40, to break into any house, or shop, with an intent to cut or destroy any serge or other woollen goods in the loom, or on the rack, or burning, cutting, or destroying any rack, or breaking and destroying any tools, is felony without benefit of clergy.

Breaking into woollen manufactories, death.

*IV. Combination among journeymen paper-makers.*

By 36 *Geo.* 3. *c.* 101, all contracts, covenants and agreements whatever, in writing, or not in writing, at any time heretofore made between any journeymen paper-makers, for obtaining an advance of wages, or for lessening their usual hours or quantity of work, or for preventing any persons from employing whomsoever they shall think proper to employ in his business of a paper-maker, or in any way whatever to affect any person carrying on the said trade, or in the conducting thereof, shall be illegal, null, and void.

All contracts between journeymen paper-makers for advancing their wages, lessening their hours of work, and the like, declared void.

And if any journeyman paper maker, or other person, shall at any time enter into, or be concerned in the making of any agreement, in writing or not in writing, in support of or relative to such combination, every person so offending, being convicted upon the oath of one witness before one justice of the peace, upon any information to be exhibited in writing, within one * month, shall by order of such justice, be committed to the house of correction, and kept to hard labour for not exceeding two calendar months. *s.* 2.

Journeymen paper makers and others entering into such contracts to be committed to the house of correction.

And the time of working by journeymen at the vat upon all fine, wove, and plate papers, if the masters shall so require, shall be half an hour about each post, twenty of which posts shall make a day's work; and the dry-worker upon all such fine paper as aforesaid, if the masters shall so require it, shall work twelve hours *per* day, allowing an interval of one hour thereout to each journeyman for refreshment. *s.* 3.

Time of working by vat-men and dry-workers.

And every journeyman paper-maker who shall enter into any combination to raise such wages, or to alter the hours or duration of work, or for any other purpose contrary to this act, or who shall, by giving money or by any other means, directly or indirectly, solicit, intimidate, or endeavour to prevent any unhired journeyman or other person from hiring himself to any paper manufacturer, or shall by any means

Penalty on journeymen taknig more wages, or entering into combinations to raise wages, &c.

* This is a lunar month.

whatsoever, directly or indirectly, decoy, solicit, intimidate, influence, or prevail, or attempt to prevail on any journeyman paper-maker employed in such manufacture, to quit his service, or shall proscribe or prevent, or attempt to proscribe or prevent any master from employing whomsoever he shall think proper, or being employed shall refuse to work with any person whomsoever which any such master shall think proper to employ, and shall be convicted of any of the said offences, on the oath of one witness before one justice, such offender shall be committed to the house of correction, and kept to hard labour for not exceeding two calendar months. *s.* 4.

If any person shall, attend or solicit any journeyman paper-maker to attend, any unlawful meeting, or shall subscribe or pay any sum of money to support the same, he may be committed for two months.

And, if any person whomsoever (whether employed in the said trade or not) shall attend any meeting by this act declared to be illegal, or shall summons, give notice to, or call upon any journeyman paper-maker, or other person employed in the said trade, to attend any such unlawful meeting, or who shall collect, demand, ask, or receive, any sum of money from any journeyman or other person employed in the said trade for any of the above purposes, or shall persuade, entice, inveigle, or intimidate any journeyman, or other person employed, to enter into or be concerned in any such meeting, or to turn against, or quit the service of the master; or if any person or persons shall pay any sum of money, or make or enter into any subscription whatsoever for the support of any such illegal meeting, every such person being thereof convicted before one justice, on the oath of one witness, shall be committed to the common gaol, or house of correction, for not exceeding two calendar months. *s.* 5.

Offenders against this act to be admitted evidence.

And any person who shall offend against this act may, equally with all other persons, be called upon and compelled to give evidence; and in every such case, shall be indemnified from any prosecution for having offended himself. *s.* 6.

Justices empowered to summon offenders, and to hear and determine.

On complaint being made on oath to any justice, such justice is to summon the offenders, and also any witnesses; and if any one so summoned shall not appear or offer some reasonable excuse for the default, then such justice shall issue his warrant for apprehending the party making default; and upon the party complained against appearing, or being brought before any such justice on his warrant, or in case the party complained against shall not appear to such summons, being served on him, or left at his usual place of abode, and proof shall be made thereof by oath before such justice, then such justice is to proceed to make inquiry touching the matters complained of, and to examine into the same, by the oath of any credible person, and to hear and determine the complaint; and upon confession of the party, or proof by one witness, to commit or acquit the party; and if any person summoned to appear as a witness shall not appear and give evidence, then such justice shall issue his warrant for the commitment of such person to some prison,

there to remain until he shall submit himself to be examined. *s.* 7.

And the justice shall cause such conviction to be drawn up in the form or to the effect following, viz.

*BE it remembered, that, on this* ——— *day of* ——— *in the* ——— *year of his majesty's reign*, A. B. *is convicted before* ——— *of his majesty's justices of the peace for the said county of* ——— [or *for the riding, or division, city, liberty, town, or place*, as the case shall happen to be] *for* ——— *and* ——— *the said* ——— *do hereby order and adjudge him* [or *her*] *to be committed to the house of correction, to be kept to hard labour for the space of* ——— *or until he or she shall submit to be examined, as the case may be, without bail or mainprize. Given under* ——— *the day and year aforesaid.* The form of the conviction.

And the justice shall cause the same to be fairly written upon parchment, and transmitted to the next general quarter sessions to be there filed. *s.* 8. Appeal.

But any person aggrieved by the judgment of the justice may appeal, at the time of conviction, to the justices at the then next general quarter sessions; and the execution of the said judgment shall, in such case, be suspended, the person so convicted entering into a recognizance at the time of conviction, with two sureties, in 20*l.* upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices in their said next general quarter sessions, and to pay such costs as the said justices in such sessions shall award on such occasion; which recognizance the said justice before whom such conviction shall be had, is to take. *s.* 10.

And in case any person so convicted shall so appeal, the justices in such general quarter sessions are, upon receiving the said conviction drawn up in the form aforesaid, to proceed to the hearing and determination of the matter of the said appeal; and they shall hear and finally determine the matter of the said appeal, and award such costs as to them shall appear just, to be paid by either party; which decision shall be final; and if upon the hearing of the said appeal, the judgment of the justice shall be affirmed, such appellant shall immediately pay such costs as the sessions shall award for such appeal, and shall be committed to the house of correction, there to be kept to hard labour, or to the common gaol, as shall be mentioned in such conviction, for the space of two calendar months, or any less time mentioned in such conviction, without bail or mainprize, and until the payment of such costs. *s.* 10.

And no *certiorari* shall be granted to remove any convic-

tion or other proceedings had thereon in pursuance of this act. *s.* 8.

Justices may issue warrants to apprehend offenders without summons.

In all cases where any information, authorized by this act to be made before one justice, shall be made upon oath of the informer, it shall be lawful for such justice to issue his warrant for the apprehension, and bringing the person offending before him, without any previous summons, and in lieu of issuing of his summons. *s.* 9.

### V. *Frauds and embezzlements by workmen and others employed in the woollen manufacture in particular.*

Workmen to do their duty on pain of double damages.

By 4 *Ed.* 4. *c.* 1, every carder, spinster, weaver, fuller, shearman, and dyer, shall duly perform his duty in his occupation, on pain of double damages to the party grieved. *s.* 6.

And every justice of the peace, mayor, master, warden, bailiff, portreeve, constable of hundred, and steward of the leet, may hear and determine the same, and commit the offender to the next gaol till the said forfeitures and damages be paid. And any person not grieved may inform; in which case the offender shall forfeit to the king, or to such person as shall be entitled to fines oramercements, 3*s.* 4*d.*; and they may grant like process as justices of the peace may do for surety of the peace, without any fee to be taken for the execution of their offices in this behalf. *s.* 6.

Embezzling wool delivered to be wrought.

By 7 *Jac.* 1. *c.* 7, every lewd person who shall unjustly or deceitfully embezzle, sell, or detain, *any wool or yarn* delivered by any person making cloths or stuffs to any sorter, carder, kember, spinster, or weaver, as well the sorter, carder, kember, spinster or weaver so offending, as the buyers and receivers, knowing the same, being convicted by confession, or by one witness upon oath, before two justices of the peace, or, if within a town corporate, before the mayor or chief officer and one of the aldermen or most substantial persons of the town, shall make the party grieved such satisfaction as by the justices shall be ordered. And if the parties offending shall not be thought sufficient, or do not make satisfaction, they shall for the first offence be apprehended and whipped, or set in the stocks in the place where the offence was committed, or in some market town in the county: and for the second offence incur the like or further punishment, by whipping, or stocks. *s.* 2.

And every receiver of wool or yarn embezzled or purloined contrary to this act, knowing the same to be embezzled, shall be subject to like punishment. *s.* 3.

And every spinner in *Essex*, that shall receive wool to be spun into yarn for any clothier, or maker of bay, says, or other stuffs, dwelling in *Cogshal*, *Bocking*, *Braintree*, *Halsteed*, *Wittam*, or *Colchester*, and shall deliver back the yarn by any

shorter reel than hath been there usual, *viz.* two yards about, shall be subject to like punishment. *s.* 4.

And by 14 *Geo.* 3. *c.* 25, if any picker, scribbler, spinner, or weaver, or other person employed in manufacturing of woollen cloth, or in preparing materials for that purpose, shall not return all *working tools, wool, yarn, chain, woof, or abb, delivered out to be manufactured, and all materials wherewith he shall be entrusted*, or give a satisfactory account touching the same to his employer, or shall fraudulently steam, damp, or water the wool or yarn delivered to him to be worked up; or if any person shall take off, cut, or pick out the list, forrel, or other mark of any piece of cloth, and shall be convicted of any such offence before some justice, either by confession, or the oath of one witness, such person shall be committed to the house of correction for one month. *s.* 1.

Embezzling tools or materials.

Steaming wool.

Picking out marks on cloth.

And if any person so employed, and who shall have been entrusted with any tools, wool, or other materials, and shall not have delivered or accounted for the same, shall abscond, or shall sell, or otherwise dispose of the same; or if any person shall fraudulently buy or receive such tools, or materials; or if any person shall be suspected of, and charged on such suspicion with, having embezzled and kept back, by damping, steaming, or watering the wool and yarn delivered out to him; or with having sold, bought, or received the same, and oath shall be made thereof before one justice, such justice shall issue his warrant to any constable, or peace officer, to enter into and search, in the day time, the residence of such person offending, and also such other place of which the clothier, his clerk, or servant, shall make oath that he have just cause to suspect (it appearing to the said justice to be reasonable suspicion) that the said working tools, or materials, or part thereof, may be secreted and lodged: and if, upon search, any of the said working tools, wool, yarn, chain, woof, or abb, or any cloth with the list, forrel, or other marks, taken off, cut, or picked out, shall be found, the said constable or peace officer shall seize the same, and apprehend the person in whose possession the same shall be found, and bring him before the same, or some other justice; and unless such person can give a good account how he came by the same, to the satisfaction of such justice, such person shall be thereof convicted, and suffer such punishment as is inflicted on persons not returning the tools or materials; and all such tools, wool, yarn, chain, woof, or abb, or such cloth, so seized and not accounted for, shall, upon such conviction, be delivered over to the churchwardens or overseers, to be by them sold; and the monies arising by such sale, after defraying the expenses of such sale, shall be applied to the use of the poor. *s.* 2.

But in case the person accused shall request of such justice to appoint a reasonable time to produce the person from whom

he bought or received the same, or some witness to prove the sale or delivery, the said justice is to appoint such time, and to issue a summons to the constable where such person or witness shall reside, requiring him to appear before such justice to be examined and give evidence, on oath, of the matters; but such person, at the time of making such request, shall enter into a recognizance, with or without sureties, as such justice shall think proper, for his appearance at the time set, or, for want of such recognizance, shall be committed until the time that shall be appointed for the appearance of such party or witnesses: and if at such appointed time such person shall be convicted of any of the offences, he shall suffer such punishment as is before directed. *s.* 3.

Concealing ends of yarn.

And upon information on oath made to any justice by any credible person, that there is just cause to suspect that any ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, drugget, or of other woollen goods, or of goods mixed with wool (flocks and pinions only excepted), have been collected and received, and are lodged or concealed in any place, such justice shall, by warrant under his hand and seal, cause such place to be sea ched in the day-time; and if such ends (flocks and pinions only excepted), above three pounds, shall be found therein, the same shall be seized; and the person in whose house the same shall be found, brought before him, or some other justice; and on proof beiug made thereof upon oath before such justice, that such ends (flocks and pinions only excepted) werefound in the dwelling house, or other place of such person, such person not exculpating himself to the satisfaction of such justice, shall thereupon suffer such punishment as is before directed for persons not returning the tools; and the materials found in the custody of such person shall, by order of such justice, be burnt or destroyed. *s.* 4.

And the justice before whom any offender shall be convicted, shall cause the conviction to be made out in the form following:

*Be it remembered, that on the ——— day of ——— in the year of our Lord ——— A B is convicted before me ———, esq. one of his majesty's justices of the peace in and for the ——— of ———, of having* [here specify the offence, and the time and place when and where the same was committed]. *Given under my hand and seal, the day and year first above mentioned.*

And the justice shall cause the same to be written on parchment, and filed at the next sessions. *s.* 8, 9.

But any person aggrieved by the judgment of any justice may appeal; *and the justice is to make known to such person, at the time of conviction, his right to appeal* to the next general

quarter-sessions, the person at the time of conviction giving to such justice notice in writing, signifying his intention to appeal, and also entering into a recognizance at the time of such notice, with sureties conditioned to try such appeal, and to abide the judgment of, and pay such costs as shall be awarded by the sessions; and the sessions are,* upon proof of such notice and recognizance, to hear and determine the appeal in a summary way, and award costs to the party appealing or appealed against, if they think proper; but if upon such hearing the judgment of the justice shall be affirmed, such appellant shall suffer such punishment, in consequence of such conviction, as is before directed. *s.* 7.

But if, upon any information made upon oath before any justice against any person offending against this act, it shall appear to such justice, that such person hath been before convicted of any offence against this act; such justice shall not proceed to convict such offender, but shall commit him to the house of correction until the next general quarter-sessions, or until such offender shall have entered into a recognizance, with sureties, to appear at such sessions, and abide the order of such sessions; and such justice shall bind over the informer to prosecute the offender at the said sessions, and the sessions shall inquire into and determine the same in a summary way; and if such person shall be found guilty of the said offence, the said justices shall commit such offender to the house of correction for not exceeding three calendar months. *s.* 5.

And if it shall appear to the justices at their general quarter-sessions, that such person hath been convicted at some sessions of any offence against this act, the said justices shall, upon a like inquiry and conviction, in a summary way, direct the offender to be committed to the house of correction, for not exceeding six calendar months, and also to be once publicly whipped at such time and place as such session shall direct. *s.* 6.

Finally, no person shall be proceeded against for any of the offences against this act, unless information shall be made upon oath before one justice, within three calendar months; and no order shall be quashed for want of form, or be removed by certiorari into any court of record at *Westminster*. *s.* 10.

By 14 *Geo.* 3. *c.* 44, if any person shall reel false or short yarn, and shall be thereof convicted by the oath or affirmation of the owner * or of any other credible witness, or by the confession of the person charged with such offence, before one justice, [*He*†] shall for the first offence forfeit, not exceeding twenty, nor less than five shillings; for the second offence, not (Reeling false or short yarn.)

* See note 2 in p. 208 supra.
† The word *He* is not in the act.

exceeding five pounds, nor less than forty shillings; and for every other offence, such justice may commit the person convicted to the house of correction to be kept to hard labour for one month, and also order the person convicted to be once publicly whipped at the nearest market town to where the offence was committed, and upon a market day; all which penalties shall go to the party aggrieved. *s.* 2.

Which said penalties shall (if not paid according to the order of the justice) be levied by distress and sale of the goods of the offender, by warrant under the hand and seal of the justice, together with the costs of distress and sale; and if no goods can be found sufficient to answer the penalties with costs of distress, then such justice shall cause such offender to be committed to the common gaol for one calendar month, unless such penalties and charges of distress shall be sooner paid. 15 *Geo.* 3. *c.* 14. *s.* 1.

But any person aggrieved thereby may appeal to the next general or quarter-sessions; and the justices in their said sessions are to hear and determine the appeal, and make order therein; which determination shall be conclusive. *s.* 2.

Also any person convicted *may* * at the time of conviction enter into a recognizance conditioned to try such appeal, abide the order of, and pay such costs as shall be adjudged by the sessions; and the sessions shall take cognizance of such appeal, and may affirm such conviction, and award such costs as they think proper: and in case the same are not paid, according to the order of the justices, such costs may be recovered by distress and sale of the goods of the person who ought to pay the same, by warrant under the hand and seal of any justice; and if no goods can be found sufficient to pay the costs and charges of distress, the said justices may cause the person to be committed to the common gaol for three months; and the determination of the sessions shall be final: and no order or other proceedings shall be quashed for want of form, or removed by *certiorari* into any court of record at *Westminster*. 14 *Geo.* 3. *c.* 44. *s.* 5.

And the justice shall cause the conviction to be made out in the manner following:

*Be it remembered, that on the* ——— *day of* ——— *in the year of our Lord* ——— A B *is convicted before me*, [or us] ——— *of his majesty's justices of the peace for* ——— [specifying the offence, and the time and place when and where the same was committed, and also specifying that it was the first, second, or third offence against this act, as the case shall be]. *Given under my hand and seal*, [or our hands and seals], *the day and year aforesaid.*

Which conviction shall be wrote on parchment, and returned

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* The word *may* must in this place be taken in an *imperative* sense, as it is the evident intent of the clause, to give the party aggrieved a right to appeal only upon the condition of his entering into a recognizance.

to the next general quarter sessions, to be filed among the records. *s.* 3.

And any clerk of the peace where such conviction shall be filed, is, upon application, to cause a copy of any conviction filed by him under this act to be delivered to such person, upon payment of one shilling for every copy. *s.* 4.

*VI. Frauds and embezzlements by workmen and others employed in the making of hats, or in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures.*

Embezzlements by persons employed in working up *woollen, linen, fustian, cotton,* or *iron,* manufactures.

By 1 *Ann. st.* 2. *c.* 18, if any person employed in the working up the WOOLLEN, LINEN, FUSTIAN, COTTON, *or* IRON manufactures within this kingdom, shall embezzle or purloin any wefts, thrums or ends of yarn*, or any other materials of wood, of wool, hemp, flax, cotton or iron, with which he shall be entrusted to work, or shall reel short or false yarn †, being thereof lawfully convicted, by the oath of one witness, or by confession, before one justice of peace, he shall forfeit double the value of the damages done, for the use of the poor of the parish; and in case the offender shall neglect to pay, it shall be lawful for the justice to commit him to the house of correction, till satisfaction be made; and in case the offender is not able to make satisfaction, he shall be there publicly whipped, and kept to hard labour for any term not exceeding fourteen days. *s.* 1.

And every person buying, or receiving ‡ wefts, thrums, ends of yarn, or other materials of wool, hemp, flax, cotton or iron, and being thereof convicted as aforesaid, shall suffer the like penalties as for purloining and embezzling of the said materials. *s.* 2.

And all payments to workmen in the same manufactures§ shall be by lawful coin, and not by cloth, victuals or commodities; and all wool delivered out to be wrought up, shall be delivered with the declaration of true weight ‖, on pain that every offender, in either of the said cases, shall forfeit to such worker double the value of what shall be due for such work; and if any such worker shall be guilty of any such fraud in the work, such worker shall answer to the owner of such work double damages. *s.* 3.

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* See 14 *Geo.* 3. *c.* 25. *s.* 4. in p. 298 supra.
† But for the punishment now inflicted for this offence, see 14 *Geo.* 3. *c.* 44. in p. 299 supra.
‡ See 14 *Geo.* 3. *c.* 25. *s.* 4, in p. 298 supra.
§ For the regulations in this respect as to persons employed in the woollen manufacture see p. 251, supra.
‖ For this see p. 251, supra.

All wages, demands and defaults of labourers in the woollen, linen, fustian, cotton, and iron manufactures, shall be heard and determined by any two justices of peace; but any person aggrieved by order of the justices may appeal to the next quarter sessions; and in case the quarter sessions shall give judgment against such appellant, they shall order costs. *s.* 4.

And by 13 *Geo.* 2. *c.* 8, if any person hired or employed in the working up of any *woollen*, *linen*, *fustian*, *or cotton*, *or iron manufactures*, shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise illegally dispose of any of the materials he shall be entrusted to work, whether the same be or be not first wrought up, or shall reel false or short yarn *, the person so offending, and convicted as prescribed by 1 *Ann. st.* 2. *c.* 18, shall forfeit double the value of the owner's damages, with such costs of prosecution as shall be adjudged reasonable by the justice before whom convicted; and in case immediate payment be not made, it shall be lawful for the justice to cause the offender to be committed to the house of correction, to be there whipped and kept to hard labour for any time not exceeding fourteen days; and in case of a subsequent offence, for embezzling any of the materials in the said act mentioned, the person so offending shall for every subsequent offence, being convicted, forfeit four times the value of the damages, with such costs as shall be adjudged reasonable by the justice; and in case immediate payment of the respective forfeitures and costs be not made, such justice, or any justice for the place where such offence is committed, shall cause the offender to be committed to the house of correction, to be kept to hard labour for any time not exceeding three months, nor less than one month, and also during the time of such commitment to be whipped at the market-place of the town where such offender shall be committed, once or oftener. *s.* 1.

And every person who shall buy or receive, by way of gift, pledge or sale, from any of the persons herein, or in the said act mentioned, any woollen, linen, fustian, cotton or iron manufactures, either before or after the same shall be wrought up, knowing the same to be embezzled, being convicted, shall suffer the like penalties as are by this or the said act inflicted on persons embezzling such materials. *s.* 2.

The forfeitures incurred by the said act, and by this act, shall be applied, one moiety to the party injured, and the other moiety to the poor of the parish only where such offence shall be committed, with the like liberty of appealing as is given by the said act. *s.* 3.

And by 22 *Geo.* 2. *c.* 27. *s.* 1, for rendering more effectual

* But for the punishment now inflicted for this offence see 14 *Geo.* 3. *c.* 44. in p. 299 supra.

the 13 *Geo.* 2. c. 8, and extending the regulations to other manufactures, be it enacted, that if any person *employed to make any felt or hat, or to prepare or work up any woollen, linen, fustian, iron, leather, fur, hemp, flax, mohair, or silk manufactures, or any of the said materials mixed one with another*, shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials with which he shall be entrusted, whether the same be or be not first wrought, and be convicted by the oath, or (if a *quaker*) affirmation of the owner, or any other witness, or by confession before *two**justices of the peace of the county or place where such offence shall be committed, or where the person charged shall reside, *it shall be lawful* (by 17 Geo. 3. c. 56. s. 1,) *for the justices by warrant to commit the person so convicted to the house of correction or public prison, there to be kept to hard labour, in the case of a first offence for not less than fourteen days, nor more than three months; and in case of a second or any subsequent offence, for any time not less than three, nor more than six months; and may likewise for the first or any subsequent offence order the person convicted to be once publicly whipped, if by the justices deemed proper.*

Or in making any *felt or hat*, or working any *woollen, linen, fustian, iron, leather, fur, hemp, flax, mohair, or silk* manufactures.

And if any person shall buy or receive from any person employed to make any of the manufactures aforesaid, any thrums or parcels of yarn, or any other materials of wool, fur, hemp, flax, cotton, or iron, or any leather, mohair, or silk, whether the same be or be not wrought, knowing the person of whom he so receives the said materials to be so employed, and not having first obtained the consent of the person employing him, or shall buy or receive from any other person any of the said materials, whether wrought or not, knowing the same to be so embezzled, the person receiving, being convicted, shall for the first offence forfeit (by 17 Geo. 3. c. 56. s. 3.) *not more than* 40l. *nor less than* 20l. *as the justices before whom the conviction shall be, shall judge proper; and such penalty shall be applied in manner following: in the first place, the expences of the prosecution shall be thereout defrayed, and then such satisfaction shall be made thereout to the party injured, as the justice shall think proper; and afterwards so much of the said penalty shall be paid to the informer as such justices shall think fit, not exceeding in any case,* 10l.; *and the remainder, if any, shall be paid and distributed to and amongst the poor of the parish, or for the use of such public charity as such justices shall appoint: and if such penalty shall not be paid upon conviction, the said justices shall commit the person convicted to the house of correction, or other public prison,*

* By 17 *Geo.* 3. *c.* 56. *s.* 2, no person shall be convicted under this act unless before two justices.

*there to be kept to hard labour for not more than six, nor less than three months, unless such penalty shall be sooner paid; or the said justices may send the person convicted to the house of correction or other public prison, there to remain for three days, exclusive of the day of commitment, with an order that within the said time the person convicted shall be publicly whipped at such market place or other public place as aforesaid.*

*And if any person shall be brought before any justices, charged upon oath or affirmation, of having been guilty of buying, receiving, accepting, or taking by way of gift, pawn, pledge, sale, or exchange, or in any other manner, and it shall appear that he hath been already convicted of the like offence, such justices shall not proceed to convict such person, but shall commit him to the house of correction, or some other public prison, there to remain until the next general or quarter sessions, or until such offender shall have entered into a recognizance to answer for such offence at the said sessions; and the justices in such sessions are to take cognizance thereof, and to hear and determine the same; and if such person shall be convicted upon the oath, or affirmation, of one witness, he shall forfeit not more than* 100l. *nor less than* 50l.*; and such penalty shall be applied by the sessions in such manner as the penalty for the first offence; and if such penalty shall not be paid on conviction, the said justices shall commit the person convicted to the house of correction, or other public prison, there to be kept to hard labour for not more than six, nor less than three months, unless such penalty shall be sooner paid; or the said justices may send the person convicted to the house of correction, or other public prison, for three days, exclusive of the day of commitment, with an order, that within the said time such person shall be once publicly whipped at such market-place or other public place as aforesaid.* 17 Geo. 3. c. 56. s. 4.

*And if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, or offer to sell, any such materials, whether wrought or unwrought, mixed or unmixed; knowing them to have been purloined or embezzled, such person shall be liable to the same punishment as on receiving purloined or embezzled materials knowingly.* 17 Geo. 3. c. 56. s. 5.

*And when any person shall be brought or charged upon oath before two justices, with being suspected of, or with having embezzled or received such materials, whether wrought or unwrought, mixed or unmixed, knowing the same to have been embezzled, or received from some person or persons not entitled to dispose thereof, and it shall be made appear upon the oath or affirmation of one witness, that such person hath purloined or embezzled, or received such materials as aforesaid, such justices, or the general quarter sessions, are, if they think*

*fit, to convict such person, although no proof be given to whom such materials belong; and the person convicted shall be subject to the like penalties and punishments as persons convicted of buying or receiving such materials, knowing the same to have been embezzled.* 17 Geo. 3. c. 56. s. 6.

And after conviction, the *justices* before whom the conviction shall be, may issue a warrant, empowering any person, in the presence of a constable or headborough, and in the day time, to search the houses and other places belonging to the person convicted, and to bring such materials aforesaid as shall be found, before the said justice to be detained; and if within twenty-four days it shall appear to the justice that the person from whose houses, &c. the materials shall be so taken, is the owner, and came to the possession of them in an honest manner, then such materials shall be restored to him; but if it shall not so be made appear within the time before limited, then the materials shall be deemed embezzled, and the justice may direct such materials to be sold, and the money arising from such sale (the charges of sale being first deducted) to be equally distributed amongst the poor of the parish where the person convicted resides. 22 *Geo.* 2. *c.* 27. *s.* 4.

Justices' power to search for materials embezzled after conviction.

Provided that the said justice shall, within three days after such materials shall be brought to him, give notice under his hand and seal to the person convicted, appointing a time and place for him to prove his property; which time shall be within 21 days, and not less than 18 days after such notice; and if the person so convicted be in any prison, the justice shall cause a copy of the said notice, attested under his hand and seal, to be delivered to the keeper of such prison, which keeper is to bring before such justice the person named in such notice, at the time and place specified, if he be then in the custody of such keeper, and if any such keeper neglect so to do he shall forfeit to the person named in such notice, the value of the materials so detained and sold, to be recovered by distress and sale of goods by warrant of the justice signing such notice, in case the said forfeiture be not immediately paid. *s.* 5.

Also *before conviction* two justices, upon complaint upon oath, by one person, or upon affirmation, that there is cause to suspect that any embezzled materials, mixed or unmixed, wrought or unwrought, are concealed in any dwelling-house, out-house, yard, garden, or other place, may, by warrant under their hands and seals, cause such place to be searched in the day time: and if any such materials shall be found therein, may cause the same, and the person in whose house the same shall be found, to be brought before two justices, and if the person shall not give an account how he came

Their power to search before conviction.

by the same, the said person shall be deemed guilty of a misdemeanor, and shall be punished in manner after mentioned, although no proof shall be given to whom such materials belong. 17 *Geo.* 3. *c.* 56. *s.* 10.

And every peace-officer, headborough, or tythingman, and every beadle, and every watchman, during such time only as he is on duty, shall and may apprehend, or cause to be apprehended, all persons who may reasonably be suspected of having or conveying, at any time after sun-setting and before sun-rising, any materials suspected to be embezzled, and the same, together with such persons, convey before two justices; and if the person apprehended shall not produce the party from whom he bought or received the same, or some witness, to testify upon oath, or affirmation, to the sale or delivery of the materials, or shall not give an account to the satisfaction of such justices, how he came by the same, the said person apprehended shall be deemed guilty of a misdemeanor, and punished as aftermentioned, although no proof shall be given to whom such materials belong. *s.* 11.

And in either of the two cases last mentioned, when any person brought before two justices shall request time to produce the person from whom he brought or received the same, or some witness to prove the sale or delivery thereof, the said justices are to appoint such reasonable time, and to issue a summons to the constable or other peace-officer where such person or such witness shall reside, requiring him to appear before two justices, to be examined, and give evidence upon oath, or affirmation, of the matters aforesaid; but such person at the time of making such request shall enter into a recognizance, with or without sureties, as such justice shall think proper, for his appearance, or, for want of such recognizance, shall be committed until the time appointed for the appearance of such party or witnesses; and if at such appointed time such person shall be convicted of any of the offences, then he shall suffer such punishment as is inflicted on persons guilty of such offences. *s.* 12.

And where any person shall be convicted of a misdemeanor in either of the two cases last mentioned, the justices may cause the materials found or seized to be deposited in the hands of the churchwardens or overseers, or in any other place, for not exceeding thirty days; and in the mean time may order the said churchwardens and overseers to insert an advertisement in some public newspapers, or otherwise cause notice to be given by some public crier, and by fixing on the church or chapel door notice describing such materials, and where the same are deposited, to the end that persons having lost such materials may come and claim the same: and in case any person can prove his property in the said materials upon oath, or affirmation, to the satisfaction of two justices, such justices shall order

restitution thereof, after paying the charges of removing, depositing, and giving notice; but if, before the end of the said thirty days, no person shall prove his property, the said justices shall order the same to be sold; and after deducting such charges, together with the charges of sale, one moiety shall be given to the person who shall apprehend or prosecute the offender, and the other moiety, either to the poor of the parish, or to such public charity as the justices shall appoint. *s.* 13.

And every person deemed guilty of a misdemeanor, in having in his possession materials suspected to be embezzled, and not producing the party of whom he bought or received the same, nor giving a satisfactory account how he came by the same; or of a misdemeanor in having, or conveying, of the said materials suspected, &c. shall forfeit for the first offence 20*l.* for the second 30*l.* and for every subsequent offence 40*l.* all which forfeitures shall be levied by distress and sale of the goods of such offender, by warrant of the justices: of which forfeiture, one moiety shall be paid to the informer, and the other moiety to the poor, or to such public charities as the justices shall appoint: and if no sufficient distress shall be found, the said justices shall commit such offender to the common gaol, or other prison, or house of correction, for one month, for the first offence; for the second offence, for two months; and for every subsequent offence, for six months. *s.* 14.

Workmen neglecting to return materials not used.

And if any person intrusted with the materials before mentioned to work up shall not use such materials in manufacturing of the same, and shall neglect (for *eight days*, by 17 *Geo.* 3, *c.* 56. *s.* 7.) after such materials shall be manufactured, to return (if required by the owner) so much as shall not be used, such neglect shall be deemed an embezzling; and the person so neglecting being convicted, shall suffer the like punishment as persons convicted of embezzling. 22 *Geo.* 3. *c.* 27. *s.* 7.

Neglecting to work up materials, or taking in work from other masters at the same time.

And if any person hired or employed to work up any materials, whether mixed or unmixed, for any master, shall wilfully neglect or refuse the performance thereof for eight days successively; or having taken in any materials, whether mixed or unmixed, for manufacture, from one master, or two or more being co-partners, shall afterwards take in any materials, whether mixed or unmixed, for manufacture, from any other master, or shall procure, or permit himself to be employed in any other employment whatsoever, sooner than eight days before the completion of the work first taken in; such person, convicted by the oath, or affirmation, of one witness, before two justices, shall be sent to the house of correction, there to be kept to hard labour for not exceeding three months, nor less than one month. 17 *Geo.* 3. *c.* 56. *s.* 8.

Receiving materials and put-

And if any person shall receive any of the materials *mentioned*

ting them out to others to be manufactured.

*in this act*, and 22 Geo. 2, in a fictitious name, or in his own name, in order to be manufactured by himself, and shall afterwards deliver the same, or part, to any other person to be manufactured (without the consent of the owner); or if any carrier, or person employed to deliver such materials to any workmen to be wrought up, shall deliver the same to any other person than to whom ordered, every person offending shall be liable to prosecution, and to the same punishment as is by this act directed in respect to persons taking in materials to work, and neglecting the performance of their work. *s.* 9.

The owner to have liberty to inspect workshops.

And the owner of such materials may enter at all seasonable hours in the day-time, into the shops or out-houses of any person employed by him to work up any of the said materials, and there inspect the condition of such materials; and in case of refusal by such person employed to permit such entrance or inspection, he shall forfeit, not exceeding forty, nor less than ten shillings, as the justices shall think proper, to be recovered and applied as directed for the misdemeanor of being in the possession of such materials, without accounting satisfactorily for such possession. *s.* 15.

Servants departing before the end of their term; returning work before finished;

And if any person retained in any of the said arts shall depart from his service before the end of the term, or shall quit or return his work before it is finished, unless for reasonable cause to be allowed by two justices, every person so offending, being convicted before two justices as aforesaid, shall be committed to the house of correction, to be kept to hard labour, not exceeding three months; and if any person employed shall wilfully damnify or destroy (without consent of the owner) any goods or work committed to his care, he shall, being convicted as aforesaid, forfeit to the owner double the value, to be levied by distress and sale of goods, by warrant of two justices, who, for want of distress, shall commit him to the house of correction, to be kept to hard labour, not exceeding three months or till satisfaction be made. 12 *Geo.* 1. *c.* 34. *s.* 2. 22 *Geo.* 2. *c.* 27. *s.* 12.

or wilfully spoiling the same.

The provisions extended to tools, and dying drugs.

Every penalty or punishment directed by 22 *Geo.* 2, in respect to the materials, so far as the said act is not varied by this, and all the provisions therein, in respect to the materials, shall extend to any tools, or implements, with which any person shall be intrusted for manufacturing the materials, and also to any drugs, or ingredients, with which any person shall be intrusted, for dying, preparing, or manufacturing the said materials. 17 *Geo.* 3. *c.* 56. *s.* 18.

Servant dying goods for his own profit.

And if any journeyman dyer, or servant or apprentice, in the dying of any felt or hat, or any woollen, linen, fustian, cotton, leather, fur, flax, mohair, or silk materials, whether wrought or unwrought, or mixed or unmixed with other mate-

rials, shall, without the consent of the master, wilfully dye any of the said materials, wrought or unwrought, or mixed or unmixed, or without such consent shall wilfully receive any such materials, for the purpose of dying the same, whether the same shall be dyed or prepared for dying, he shall, for the first offence forfeit 10*s.* for the second, 20*s.* and for every subsequent offence, 40*s.*; or if any person shall procure any such materials to be dyed by any journeyman, servant, or apprentice, without the consent of his employer, or shall offer such materials to any journeyman, servant, or apprentice, for the purpose aforesaid, he being thereof convicted, by the oath, or affirmation, of one witness, before two justices, shall, for the first offence forfeit 5*s.* for the second, 20*s.* and for every subsequent offence, 4*l.* and each of the said penalties shall be paid to the informer; and in case of non-payment on conviction, the person convicted shall be committed by the justices to the common gaol or house of correction, for not exceeding one month. *s.* 17.

*And in order to the recovering the penalties*, one justice, upon complaint to him made upon oath, or affirmation, of any offence committed against this act, is to issue his warrant for apprehending and bringing before the aforesaid two justices the person charged with such offence; and the justices before whom such person shall be brought are to hear and determine the matter and proceed to conviction. *s.* 19. Conviction of offenders.

And any inhabitant of any parish in which any offence shall be committed contrary to 12 *Geo.* 1. and 22 *Geo.* 2. or this act, shall be a competent witness. *s.* 18. Witnesses.

And the justices before whom any offender shall be convicted of any offence, either against 22 *Geo.* 2, or this act, shall cause the conviction to be certified to the next general or general quarter sessions, to be filed with the records of such sessions: and such conviction shall be drawn up and written on parchment, and certified in the following form, as far as the name of the person and nature of the case will admit: *s.* 21.

Middlesex (*or any other place, as the case shall be*) to wit. *Be it remembered, that on the* ——— *day of* ——— *in the year of our Lord* ——— A B, *was convicted before us* ——— *of his majesty's justices of the peace in and for the said county of* ——— or, *for the riding of the said county of* ——— or, *for the city, liberty, town or place, aforesaid, in the said county* ——— [as the case shall be] *of* ——— [Here specify the offence and when and where the same was committed.]

*Given under our hands and seals, the day and year first above written.*

No order concerning any of the matters in this act, or any

proceedings to be had touching the conviction of any offender against 22 *Geo.* 2, or this act, shall be quashed for want of form, or removeable by *certiorari* into the *King's Bench;* and the justices shall cause the same, drawn up in the form aforesaid, to be fairly written upon parchment, and transmitted to the next general or general quarter-sessions, to be filed amongst the records; and in case the person convicted shall appeal from the judgment of the justices to the sessions, the sessions are, upon receiving the said conviction drawn up in the form aforesaid, to proceed to the determination of the appeal. *s.* 22.

Appeal.

And any person aggrieved by the order or judgment of two justices before whom he shall have been convicted of any offence against 12 *Geo.* 1, and 22 *Geo.* 2, or this act, may appeal; and the said justices are to make known * to such person, at the time of conviction, his right to appeal to the next general quarter-sessions (such person at the time of conviction, giving to such justices notice in writing of his intention to appeal, and also entering into a recognizance, at the time of such notice, with sufficient sureties, conditioned to try such appeal, and to abide the judgment of, and pay such costs as shall be awarded by, such sessions); but if the person giving notice of appeal shall not enter into such recognizance, then the justices may commit such person to prison, there to remain until the next sessions, unless such recognizance shall be sooner entered into; and the said justices before whom such conviction shall have been made, or any two justices ‖ of the same county are to take; and the justices at such sessions are upon proof of such notice of appeal to hear and determine the appeal, and award costs, to be paid by either party; and if, upon the hearing of such appeal, the judgment of the justices shall be affirmed, such appellant shall, within forty-eight hours after, suffer such corporal punishment as shall have been directed to be inflicted upon him, or shall immediately pay the sum which he shall have been adjudged to forfeit, together with such costs as

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* *Are to make known.*] As the legislature hath directed the convicting magistrate to make known to the party convicted his right to appeal, they must be understood to mean that the justices should inform him of the necessary steps to be taken by him to enforce that right; the two justices ought therefore to inform the persons convicted, not only that he may appeal at their decision, but also of the necessity of giving them a notice in writing; and if the justices do inform him of such right without saying any thing about the notice, and he enter into a recognizance, the sessions are bound to receive in notice the appeal, though he did not give the writing; otherwise the party convicted will be deluded by the act of the justices in taking the recognizance. *The K.* v. *Justices of Leeds, Ea.* 32 *Geo.* 3. 4 *Term Rep.* 53.

‖ So in the act.

the sessions shall award; or in default of such payment shall be committed to the common gaol, or house of correction, in the same manner, and for the same time, to be computed from the affirmance of such conviction, as shall be directed by the original conviction, unless the person convicted shall have been imprisoned under the original conviction, in which case the time for which such person shall have been confined, shall be included in the order of confirmation. *s.* 20.

Nothing herein shall extend to repeal any former laws now in being, except so far as is particularly expressed by this act; and no offender proceeded against upon this act shall for the same offence be afterwards proceeded against upon any former law. *s.* 23.

*** And, for the more easily carrying of the acts 22 *Geo.* 2. c. 27, 14 *Geo.* 3. *c.* 44, and 15 *Geo.* 3. *c.* 14, * into execution, and more effectually preventing frauds and abuses committed by persons employed in combing wool, worsted yarn, and goods made from worsted, certain local regulations are made by different acts for particular counties— *more especially that committees of the manufacturers in such counties shall from time to time appoint inspectors who shall examine the reels and yarn, and cause offenders to be convicted; and for the expenses thereof a fund is to be established out of the drawbacks of the duty on soap, allowed to the manufacturers for soap consumed in the woollen manufacture.*—But these regulations being very extensive, and operating only in the particular counties for which they were made †, it is deemed unnecessary to insert them at length in his work.

## VII. *Frauds and embezzlements by persons employed in the business of clock-making or watch-making.*

By 27 *Geo.* 2. *c.* 7, if any person employed by any person practising the trade of clock-making or watch-making, or any **Workmen embezzling mate-**

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* For the two last acts see p. 299, supra.

† These local statutes are 17 *Geo.* 3. *c.* 11. 24 *Geo.* 3. *sess.* 2. *c.* 3. 25 *Geo.* 3. *c.* 40. 31 *Geo.* 3. *c.* 56.

And the stat. 17 *Geo.* 3. *c.* 11, is for the counties of *York, Lancaster, and Chester.*

The stat. 24 *Geo.* 3. *sess.* 2. *c.* 3, is for the county of *Suffolk.*

The stat. 25 *Geo.* 3. *c.* 40, is for the counties of *Bedford, Huntingdon, Northampton, Leicester, Rutland,* and *Lincoln,* and the *Isle of Ely.*

And the stat. 31 *Geo.* 3. *c.* 56, is for the county of *Norfolk* and city of *Norwich.*

rials put out to work.

branch of such trade, to make, finish, alter, repair, or clean any clock or watch, or any part of a clock or watch, or intrusted by any person practising the said trade with any gold, silver or other metal or material, to be or that shall be in the whole or in part wrought for any part of a clock or watch or any precious stone set or to be set in or about any clock or watch, shall purloin, embezzle, sell, pawn, exchange, or otherwise unlawfully dispose of any such goods, and be convicted by the oath of the owner, or any other witness or by confession before any justice, every such offender shall for the first offence forfeit 20*l.* and in case the forfeiture be not forthwith paid, the justice shall commit the party convicted to the house of correction, or other public prison, to be kept to hard labour for fourteen days, unless such forfeiture be sooner paid; and if within two days before the expiration of the fourteen days such forfeiture be not paid, the said justice is empowered to order the person convicted to be publicly whipped; and for a subsequent offence the person again offending shall forfeit 40*l.* which if not forthwith paid, the justice shall commit the person again offending to the house of correction or other public prison, to be kept to hard labour, for not exceeding three months, nor less than one, unless the forfeiture be sooner paid; and if within seven days, before the expiration of the time for which such offender is committed the forfeiture be not paid, the justice is empowered to order the person again offending, to be publicly whipped twice or oftener. *s.* 1.

Buyers or receivers thereof.

And if any person shall buy, receive or take by way of gift, pawn, or exchange, or in any other manner, any clock or watch, or any part of a clock or watch, or any gold, silver, or other metal or material as aforesaid, wrought or not wrought, or any precious stone intrusted with any person hired or employed as aforesaid, knowing the same to be so purloined and embezzled, being convicted in manner before prescribed, he shall for the first offence forfeit 20*l.*; and in case the forfeiture be not forthwith paid, the justice before whom such conviction is had shall commit the party so convicted to the house of correction or other public prison, to be kept to hard labour for fourteen days, unless the forfeiture be sooner paid; and if within two days before the expiration of the said fourteen days the forfeiture be not paid, the justice is to order the person so convicted to be publicly whipped once or oftener, as to such justice appears reasonable; and in case of a subsequent offence of the same kind, the person so again offending, being convicted, shall forfeit 40*l.* which if not forthwith paid the justice shall commit the party to the house of correction, or other public prison, to be kept to hard labour for not exceeding three months, nor less than one, unless the forfeiture be sooner paid; and if within seven days before the expiration of the time for which such

offender is committed the forfeiture be not paid, the justice is to order such offender to be publicly whipped twice or oftener. *s.* 2.

Application of penalties.

And the said forfeitures when recovered, after satisfaction thereout to the party injured, with such costs as shall be adjudged by the justice, shall be applied to the use of the poor of the parish where the person convicted resides. *s.* 8.

Appeal.

But if any person convicted as aforesaid, of purloining, *&c.* or of receiving, *&c.* any of the goods before mentioned, think himself aggrieved, such person may appeal to the next general or quarter-sessions, and the execution of the judgment shall be suspended, the person convicted entering into a recognizance at the time of conviction, with two sureties in double the sum adjudged to forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment of the sessions; which recognizances the justice before whom such conviction is had is to take; and the justices in sessions are finally to determine the appeal, and award costs to be paid by either party; and if the judgment be affirmed such appellant shall immediately pay the sum adjudged with costs, or in default shall suffer the pains inflicted upon persons who neglect to pay the forfeitures. *s.* 3.

Offenders to be apprehended.

And one justice on complaint to him made upon oath of any offence against this act, may issue his warrant for apprehending and bringing before him, or before any other justice of the same place, the person so charged; which justice is to hear and determine the matter of such complaint, and to proceed to conviction and judgment thereupon. *s.* 5.

Conviction.

And the justice of peace before whom any person shall be convicted, shall cause such conviction to be drawn up in the form following:

Middlesex } *BE it remembered, that on the* —— *day of*
to wit. } —— *in the* —— *year of his majesty's reign,* A B *was convicted before me* [or *us*] —— *of his majesty's justices of the peace for the said county of* ——, *or for the* —— *riding or division of the said county of* —— *or for the city, liberty, or town of* —— *in the said county of* —— [as the case shall be] *of purloining embezzling, secreting, selling, pawning, exchanging, or unlawfully disposing of, or of buying, receiving, or taking to pawn* [as the case shall happen to be] —— [specifying the respective goods, materials, or effects] *the property of* C D *of* —— *in the county of* ——. *Given under my hand and seal* [or, *our hands and seals*], *the day and year aforesaid.*

And the justice shall cause the conviction to be fairly written upon parchment, and transmitted to the next sessions, there to be filed and kept among the records. *s.* 4.

And the same shall not be liable to be removed by *certiorari*. *s.* 4.

### VIII. *Frauds and embezzlements by persons employed in the leather manufactures.*

Frauds by journeymen shoemakers within the bills of mortality in particular.

By 9 *Geo.* 1. *c.* 27, if any journeyman shoemaker within the bills of mortality shall be accused by the master employing him of having fraudently purloined, sold, pawned or exchanged, any boots, shoes, slippers, cut leather, lace, lasts, or other materials, not being the goods of the person accused, it shall be lawful for any justice of peace where the offence shall be committed, or where the party accused shall reside, on complaint on oath, to summon the party, or to issue his warrant to apprehend him; and on his appearance, or default, to proceed to examine the fact, and on proof on the oath of one witness to convict the offender and award satisfaction; and upon neglecting to pay, to levy the same by warrant on the offender's goods, and for want of distress to cause the offender to be whipt in the place where the offence shall be committed; and in case of conviction for any second or other offence, to commit the offender to the house of correction to hard labour, for any time not exceeding one month, nor less than fourteen days. *s.* 1.

Receiving purloined goods there.

And every person who shall buy, receive, or take in pawn, any boots, shoes, *&c.* or materials for making them, not being the proper goods of him that sells or pawns them, shall (being convicted in manner aforesaid) make such recompense within two days after the fact shall be determined, as shall be awarded; or else be subject to such distress, and be liable to the like punishment as is inflicted on journeymen so purloining, *&c. s.* 2.

Power of justices to search.

And two justices dwelling within the bills of mortality, on complaint upon oath, may issue their warrant for searching in the day-time, the house of such person as they shall suspect to have received or taken to pawn any such goods so fraudulently embezzled, and on refusal to, break open any such house; and every person opposing such search shall forfeit 10*l.* to any person who shall sue for the same within two months in the courts at *Westminster*. And if it shall appear by the oath of one witness, or on search of such house, that such person hath in his custody any such goods, the justices shall cause them to be restored to the owner, and oblige the party offending to make satisfaction; and the party refusing so to do shall be subject to the like punishment as is inflicted on such journeymen, *&c.* so fraudulently embezzling, *&c. s.* 3.

Leaving work unfinished.

And every person retained in the making up of any boots, shoes, *&c.* for any one master, and who shall neglect the performance thereof, by suffering himself to be retained by any other master before he shall have finished the work first deli-

vered: such offender, on conviction on oath before one justice, shall be sent to the house of correction, to be kept to hard labour for not exceeding one month. *s.* 4.

But persons aggrieved by any order made by such justice may appeal to the next quarter-sessions, giving eight days notice, which quarter sessions shall have power to make satisfaction to either party, and their determination shall be final. *s.* 5.

And IN GENERAL by 13 *Geo.* 2. *c.* 8, if any person hired or employed in manufacturing of *gloves, breeches, leather, boots, shoes, slippers, wares, or other goods or materials used in any of those trades*, shall fraudulently embezzle, secrete, sell, pawn or exchange any of the materials with which he shall be intrusted to work, or shall embezzle, *&c.* any wares when made up, or do or permit any other act whereby to lessen the value of such wares, either before or after the same shall be made into wares, and be convicted by the oath or affirmation of the master or owner, or any other witness, or confession before one justice of the peace, for the place where such offence shall be committed, or where the party so charged shall reside, such justice shall award the person so offending to make a recompense to the parties injured, for the damage, so as the same do not exceed double the value of the goods embezzled, one half to go to the party grieved, and the other to the poor of the parish where such offence shall be committed, together with the charges of conviction, to be levied by warrant of such justice by distress and sale of goods; but if such offender have not goods sufficient to answer the forfeitures and charges, and shall not immediately pay the same, then the said offender shall, by warrant of such justice, be, for every distinct offence, committed to the house of correction, or public prison of such county or place, and there kept to hard labour for fourteen days, and shall be there whipped, as the said justice shall order; and in case of a subsequent offence, the person so offending, being convicted, shall forfeit four times the value of the damages, with the costs of prosecution; and in case immediate payment be not made, it shall be lawful for such justice to commit the offender to the house of correction, or public prison, to be there kept to hard labour for any time not exceeding three months, nor less than one, and also during such commitment shall cause the said offender to be publicly whipped at the market-place of the town where he is committed, once or oftener. *s.* 4.

Embezzling goods put out to work in general.

And every person who shall knowingly buy or receive from any person (except the owners) any of the said gloves, *&c.* shall for every offence, being convicted, make satisfaction within two days after the matter is determined by any justice, or else be subject to such distress, and for want of sufficient distress be liable to the like punishment as is inflicted on such persons as embezzle any gloves, *&c.* and so in like manner for every subsequent offence. *s.* 5.

Buyers and receivers of purloined goods.

Workmen to be paid in money.

And all payments to any workmen for work done in such manufactures shall be in lawful coin only, and not by any victuals or commodities, except by their request; and all materials delivered to be wrought up in such manufactures shall be delivered with a declaration of the weight, quantity, or tale thereof, on pain of forfeiture to such worker double the value of what shall be due for such work; and if any such worker shall be guilty of any fraud or neglect in the work he shall answer to the owner double damages. *s.* 6.

Power of justices.

And all wages, demands, frauds, and defaults of workers in the trades last mentioned, shall be determined by any two justices of the county or place where the matter in controversy shall happen. *s.* 7.

Work to be finished.

Also every person who shall first be retained or employed in the making up any gloves, or other wares aforesaid, for one master, and shall neglect the performance thereof by hiring himself to another master, before he shall have completed the same, being convicted upon the oath or affirmation of one witness, before one justice where the offence shall be committed, shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding one month. *s.* 8.

And if any person shall think himself aggrieved by any judgment of the said two justices, it shall be lawful for him to appeal to the justices of peace at their next general or quarter-sessions (giving eight days notice of such appeal to the person against whom it shall be brought); and such justices, at their next general quarter-sessions, are finally to determine the appeal, and award to the party on whose behalf such appeal is determined, reasonable costs; but no order made by the said two justices shall be appealed from, or vacated for want of form only. *s.* 9.

And no person shall suffer punishment twice for the same offence. *s.* 10.

### IX. *Frauds and embezzlements by persons employed in the silk manufactures.*

Embezzling goods put out to work.

By 13 and 14 *Car.* 2. *c.* 15, every silkwinder and doubler who shall embezzle, pawn, sell, or detain, any silk delivered to them to wind or double, as well the winder or journeyman offending, as the receivers of such silk, being thereof convicted, by confession, or by one witness upon oath, before one justice of peace, or before the mayor or chief officer of a city or town corporate, they are empowered finally to hear and determine the offences aforesaid, and to give the parties grieved such satisfaction for their damage and charges, as by the justices or chief officer shall be ordered. *s.* 6.

Provided that no more damage be awarded than the party

grieved shall prove he is damnified, and hath expended in looking after the same; and if the party offending shall not make satisfaction within fourteen days after conviction, for the first offence, he shall be whipped or set in the stocks, in the place where the offence is committed, or in some market town in the county near the place; and for the second offence incur such further punishment by whipping, or being put in the stocks, as the justices or chief officers shall think fit. *s.* 7.

Receiving such embezzled goods.

And any receiver of any silk purloined contrary to this act shall make satisfaction within the time aforesaid, or be subject to the like punishment as the person purloining such silk. *s.* 8.

Also by 20 *Car.* 2. *c.* 6. *s.* 3, if any silk-winder or doubler shall be found faulty in embezzling, pawning, selling or detaining any silk committed to his trust, any justice of peace, mayor, or chief officer, of any county, liberty, or corporation, shall upon conviction by confession of the party, or upon the oath of one witness, commit the offender to prison or to the house of correction, till satisfaction be given to the party wronged, or punishment inflicted, according to 13 and 14 *Car.* 2. *c.* 15.

And by 8 and 9 *Wil.* 3. *c.* 36, every person that shall embezzle, pawn, sell, or detain any silk delivered to him to be wrought, or after it is wrought up, and also the receiver and buyer thereof, or such as take the same in pawn, shall be subject to all the penalties in 13 and 14 *Car.* 2. *c.* 15, and 20 *Car.* 2. *c.* 6.

Persons buying silk from those who are employed to work the same up, knowing them to be so employed.

Finally, by 32 *Geo.* 3. *c.* 44, if any person shall buy, receive, accept, or take by way of gift, pawn, pledge, sale, or exchange, or in any manner whatsoever, from any person employed to work up the silk manufacture, or silk mixed with other materials, any silk, whether the same be or be not first wrought up, and whether the same be or be not mixed with other materials, knowing such person to be so employed as aforesaid, and not having first obtained the consent of the person so employing him, or whether any silk shall have been purloined or embezzled by any person, shall buy, receive, accept, or take from any person, any such silk, whether wrought or unwrought, mixed or unmixed, knowing the same to have been purloined or embezzled, the person so buying, receiving, accepting, or taking any such silk, may be proceeded against as directed by 22 *Geo.* 2. *c.* 27, and 17 *Geo.* 3. *c.* 56 *, or may be prosecuted for a misdemeanor, and punished by fine, imprisonment, or whipping, as the sessions (who are empowered to try such offenders) or any other court before which they

* See Division v. of this title, supra.

shall be tried, shall think fit, although no proof upon such trial be given to whom such silk doth belong. *s.* 4.

Selling purloined silk.

And if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of any silk, wrought or unwrought, mixed or unmixed, knowing the same to have been so purloined or embezzled, he shall be liable to the same punishment as persons convicted of receiving purloined or embezzled silk would be liable to by virtue of this act. *s.* 5.

Breaking into silk manufactories.

And to break into any house or shop with intent to destroy any velvet, wrought silk, or silk mixed with other materials, or other silk manufacture in the loom, or any warpe or shute, tools, tackle, or utensils; or to cut, break, or destroy the same, is felony without benefit of clergy —See 22 *Geo.* 3. *c* 40. *s.* 2, under title *FELONY without clergy*, sec. Manufactories breaking into.

## X. *Misbehaviour by frame-work knitters.*

By 28 *Geo.* 3. *c.* 55, if any frame-work knitter, who shall rent or take by the hire any stocking-frame, either with or without any machine or engine thereunto annexed, or therewith to be employed, from any person whomsoever, shall refuse to re-deliver such frame, with the machine or engine therewith let, if any such there be, to the person of whom he shall rent the same, having received from such person fourteen days previous notice for such purpose, the person so offending, being thereof convicted by the oath or affirmation of the owner or employer of such frame, or any other witness, before one justice, shall forfeit 20*s.* to the poor of the parish where such offence shall be committed; and in case the said forfeiture shall not be immediately paid, and the said frame with the machine therewith let, delivered up to the owner, within six days after such conviction, the justice shall commit the party convicted to the common gaol, there to remain without bail, and to be kept to hard labour, for not exceeding three months, nor less than one. *s.* 1.

And if any person so renting or taking to hire any stocking-frame, with or without such machine, shall sell, or otherwise unlawfully dispose of such frame or machine, without the consent of the owner, such offender, being thereof convicted upon indictment, shall suffer solitary imprisonment in the common gaol, for not less than three, nor exceeding twelve months. *s.* 2.

And if any person shall wilfully receive or purchase any such frame, machine, or engine, so sold or unlawfully disposed of, and shall thereof be convicted by indictment, such offender shall be subject to the like punishment as the person selling. *s.* 2.

### XI. *Payment of manufacturers' wages.*

Every clothier, serge-maker, or woollen or worsted-stuff-maker, or persons employed in making any woollen cloths, serges, or stuffs, or concerned in employing woolcombers, weavers, or other labourers in the woollen manufactory *, (*or employing any journeymen dyers, journeymen hot-pressers, or any other persons employed in any of the woollen manufactures in this kingdom; or employing any journeymen, or other persons employed in the making of felts, or hats, or in any of the manufactures of silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron, or leather, or any of the said materials mixed one with another*, 22 Geo. 2. c. 27. s. 12)—shall pay all persons by them employed the full wages agreed on in money, and not in goods, or in any other manner, or make any deduction on account of any goods sold previous to such agreement: and it shall be lawful for any two justices of peace, on complaint made (within three months after the offence 13 *Geo.* 1. *c.* 23. *s.* 17), to summon the parties offending, and for non-payment of the wages in money, to issue their warrant for levying the wages by distress and sale of goods; and for want of distress to commit the offender to the common gaol for six months, or till he shall pay the wages, or give satisfaction to the party. 12 *Geo.* 1. *c.* 34. *s.* 4. 22 *Geo.* 2. *c.* 27. *s.* 12. Wages to be paid in money.

And if any such person shall pay any wages either in goods, or by way of truck, or in any other manner than in money, the offender shall forfeit 10*l.* one moiety to the informer, the other to the party aggrieved, to be levied by distress and sale as aforesaid. 12 *Geo.* 1. *c.* 34. *s.* 4. 22 *Geo.* 2. *c.* 27. *s.* 12.

But it shall be lawful for any person aggrieved by any order of the two justices, to appeal † to the next quarter-sessions, giving notice of such appeal; and if it shall appear that reasonable notice was not given they shall adjourn the appeal to the next quarter-sessions, and they shall have power to award costs. 12 *Geo.* 1. *c.* 34. *s.* 5. 22 *Geo.* 2. *c.* 27. *s.* 12.

By 13 *Geo.* 3. *c.* 68, the wages of journeymen weavers in the silk manufacture (*or in any manufacture of silk mixed or wrought up with any other materials*, 32 Geo. 3. c. 44. s. 1), within the city of *London*, shall be settled by the lord mayor, recorder, and aldermen of the said city; and in the county of *Middlesex*, by the justices for the county; and within the How wages of persons employed in the silk manufacture in particular are to be ascertained within the bills of mortality.

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* See p. 251 supra, concerning the payment of the wages of persons employed in the woollen manufacture in particular.

† But for the conditions now required upon such appeal, see *s.* 26 of 17 *Geo.* 3. *c.* 56, in p. 310, 311, supra.

city and liberty of *Westminster*, at the general quarter-sessions of the peace for the said city; and within the liberty of the *Tower of London*, at the general quarter-sessions for the said liberty, at their general quarter-sessions respectively; and the lord mayor, recorder, and aldermen, of the city of *London*. And the said justices are authorized, upon application made to them for that purpose, to settle and declare the wages of the journeymen weavers working within their jurisdictions; and shall within fourteen days after making such order cause the same to be printed and published, at the expense of the persons applying for the same, three times in any two daily news-papers published in *London* or *Westminster*; which publication shall be deemed notice; and afterwards, all weavers and their journeymen are to observe the same. *s.* 1.

And if any master weaver shall give more or less wages to any of the journeymen weavers for their work than shall be allowed, and shall be convicted of the said offences before two justices, on the oath of one witness, he shall forfeit fifty pounds, to be levied by distress and sale of goods; and the said penalty, when recovered, shall be paid into the hands of the master of the weaver's company, first deducting the expense of such prosecution, to be distributed to any distressed journeymen weavers, or their families. *s.* 2.

And if any journeyman weaver shall ask or take more or less wages, or larger or less prices, or shall enter into any combination to raise the wages or prices of the work, or for this purpose shall decoy, solicit, or intimidate any journeymen so that he or they quit their masters for whom they shall then be employed; or shall assemble themselves in numbers exceeding ten, in order to frame or deliver petitions touching their wages, except to the justices, or to the lord mayor, recorder, and aldermen, at the quarter-sessions, and shall be convicted of any of the said offences, on the oath of one witness, before two justices he shall forfeit not exceeding 40*s.*; and if not immediately paid, the justices may commit the offender to the house of correction to hard labour, for not exceeding three months; the said forfeiture, when recovered, to be applied as the forfeiture of fifty pounds. *s.* 3.

And two justices (on information upon oath that there is reason to suspect that any master or journeyman hath been guilty of any of the offences) may, at the request of such informant, issue their summons in writing, signed by such two justices, requiring any clerk, foreman, apprentice, servant, or other person employed by such person suspected, or any other person whatsoever, to attend and testify concerning the premises: and if any person so summoned shall not attend, and proof shall be made of the service of such summons, either personally, or by leaving the same at the abode of such person, such two justices, or any

other two justices, are (unless a reasonable excuse be made for such non-attendance) to issue their warrant for apprehending and bringing him before them, or some other two justices, to be examined touching the premises; and if such person shall refuse to be examined or give testimony, such person shall by the said justices be committed to the house of correction for one month, unless he shall sooner submit to be examined. *s.* 4.

And if any master weaver residing within the limits shall, directly or indirectly, employ any journeyman out of the limits, with intent to evade this act, or shall give more or less wages than settled, such person shall forfeit fifty pounds; to be sued for by action of debt, in any court of record at *Westminster*, wherein costs shall be paid; one moiety of which forfeiture shall be paid to his majesty, and the other moiety to the person who shall sue. *s.* 5.

But nothing in this act shall regulate wages to be paid to servants, *bona fide* employed as foremen. *s.* 6.

And no weaver within the districts shall have in his service at one time more than two apprentices, upon pain of forfeiting twenty pounds; to be levied by distress and sale of goods upon conviction, on the oath of one witness, before two justices; and the said penalty shall be paid into the hands of the master of the weaver's company, to be applied as aforesaid; and the said justices are to discharge every apprentice exceeding two. *s.* 7.

And by 32 *Geo.* 3. *c.* 44, the said justices may draw up the conviction in the following form, or to the like effect:

——— to wit. } *BE it remembered, that on this* —— *day of* —— *in the year of our Lord* —— A B *is convicted before us* —— *and* —— *two of his majesty's justices of the peace in and for the said county of* —— (or *for the city, liberty, town, or place*, as the case may be), *for* (here specify the offence, and when and where the same was committed), *and we the said justices do adjudge him* (or *her*) *to pay and forfeit for the same the sum of* ——. *Given under our hands and seals, the day and year first above written.*

Which said conviction shall be written upon parchment, and filed at the next sessions. *s.* 2.

But any person convicted before such two justices, may appeal to the next general quarter sessions or general sessions, giving immediate notice of such appeal, and finding sufficient security to the satisfaction of such justices for being personally present at such sessions, and for prosecuting the appeal with effect, and abiding the judgment of the court; and such sessions shall finally determine the matter, and may award costs to either party; and if such conviction shall be affirmed at sessions, such

appellant shall be committed to prison for the time specified in the conviction, and until payment of costs. 13 *Geo.* 3. *c.* 68. *s.* 8.

And no proceedings shall be quashed for want of form, nor be removed by *certiorari* into any other court. 32 *Geo.* 3. *c.* 44. *s.* 3.

For the regulations respecting the wages of the manufacturers of lace, see p. 210 supra.

## XII. *Settling disputes by arbitration.*

Differences between masters and journeymen in the COTTON trade, how to be settled by arbitration.

In all cases that shall arise within *England*, where the masters and workmen [*in the trade or manufacture of cotton weaving*] cannot agree respecting the price to be paid for work, whether such dispute shall happen between them respecting the reduction or advance of wages, or any injury done by the workmen to the work, or respecting any delay on the part of the workmen in finishing the work, or the not finishing such work in a good and workmanlike manner; and also in all cases where the workmen are to be employed to work any new pattern which shall require them to purchase any new implements, and the masters and workmen cannot agree upon the compensation in respect thereof, and also respecting the length of all pieces of cotton goods, or the wages or compensation to be paid for all pieces made of any extraordinary length, and respecting the manufacture of cravats, shawls, polycat, Romall, and other handkerchiefs, and the number to be contained in one piece, and the wages to be paid in respect thereof, and in all cases of disputes arising between the masters and workmen touching such trade or manufacture, which cannot be otherwise mutually adjusted between them; it shall be lawful for such masters and workmen, or either of them, to demand and have an arbitration or reference of such matter. 39 & 40 *Geo.* 3. *c.* 90. *s.* 1.

And one justice may decide.

And in all cases where an arbitration may be demanded, where the party complaining and the party complained of shall come before or agree by any writing under their hands to abide by the determination of any justice of the peace or magistrate of the county, city, town, or place within which the parties reside, such justice or magistrate may hear and finally determine in a summary way, the matter in dispute between such parties. 44 *Geo.* 3. *c.* 87. *s.* 2.

Or if they do not agree to go before one justice, the justice may summon the party complained of.

But if they shall not come before or so agree to abide by the determination of such justice or magistrate, then any such justice or magistrate may on complaint before him and proof by the examination of the party making such complaint, that application has been made to the person against whom such cause of complaint has arisen, or his agent if such dispute has arisen

with such agent, to settle such dispute, and that the same has not been settled upon such complaint being made, or where the dispute relates to a bad warp, such cause of complaint shall not be done away within 48 hours after such application, may summon before him such person, or agent, on some day not exceeding three days, exclusive of *Sunday*, before the making such complaint, giving notice to the person making such complaint of the time and place appointed in such summons, for the attendance of such person, or agent, as aforesaid. *s.* 2.

And if at such time and place the person so summoned shall not appear by himself, or send some person on his behalf, to settle such dispute, or appearing, shall not do away such cause of complaint, then such justice may, at the request of either party, nominate arbitrators, or referees, for settling the matters in dispute; and such justice shall at such meeting propose not less than four nor more than six persons, one half of whom shall be master manufacturers, or agents, or foremen of some master manufacturer, and the other half weavers in such manufacture all (residing in or near to the place where such dispute shall have arisen) out of which master manufacturers, agents, or foreman, the masters engaged in such dispute, or his agent, shall choose one, and out of which weavers so proposed the weaver, or his agent, shall chuse another, who shall have full power to hear and finally determine such dispute; and the said justice shall thereupon appoint a place of meeting according to the directions of this act, and also a day for the meeting, notice of which nomination, and of the day of meeting, shall thereupon be given to the persons so nominated arbitrators, or referees, and to any party to any such dispute, who may not have attended the meeting before such justice as aforesaid; which appointment shall be by such justice certified in the form following; (that is to say),

Form of appointment of referees.

I, A. B. *one of the justices of the peace, acting for* —— *do hereby certify, that* C. D. *and* E. F. *are duly nominated referees to settle the matters in difference between* G. H. *of* —— *master manufacturer* [*or, agent of, as the case may be*] ——. *and* I. K. *of* —— *weaver, pursuant to an act passed in the forty fourth year of the reign of his present majesty, and that the said referees are hereby directed to meet at* —— *on the* —— *day of* —— *at* —— *of the clock.* A. B.

And the arbitrators so appointed shall hear and examine the parties and their witnesses, and determine (l) such dispute within

(l) Form of the award, to be written at the foot, or upon the back of the order of the justices appointing the arbitrators, (upon unstamped paper, 39 & 40 *Geo.* 3. *c.* 90. *s.* 3.)

WE J. K. *and* L. M. [name and describe the referees], *the referees appointed to settle the matters in dispute between the*

two days after such nomination, exclusive of *Sundays*; and their determination shall be final and conclusive. *s*. 2.

Parties may extend the time of making the award.

But if the parties who shall have signed any submission to arbitration shall think it expedient to extend the time limited for making of the award, they may extend the same accordingly by indorsement (II) on the back of such submission, to be signed by both of them in the presence of one witness. 39 *and* 40 *Geo*. 3. *c*. 90. *s*. 2.

And if either of the parties, or their witnesses, having been summoned, shall neglect or refuse to attend such arbitrators, it shall be lawful for one justice, upon proof on oath before him of the service of such summons, either personally or by leaving the same at the abode of such person summoned, and also upon the like proof of the neglect or refusal of such person to attend the arbitrators (unless a reasonable excuse be made to the satisfaction of such justice), to issue his warrant for the apprehending such person, and if any such person so being brought before such justice shall refuse to be examined, such person shall be by the said justice committed (III) to the house of correction, there to remain until he shall submit to be examined before the arbitrator. 39 *and* 40 *Geo*. 3. *c*. 90. *s*. 1.

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*parties within named*, [or *I* I. K. *the referee on the part of the within* A. B. L. M. *the referee appointed on the part of the within named* C.D.], *having*, *notwithstanding the notice*, *failed to attend*, *I*, N. O. *the justice* [as the case may be], *do hereby adjudge and determine*, *that* [here set forth the determination, to which the referees or referee, or justice, as the case may be, shall subscribe their names.]

(II) Form of indorsement, extending the time limited for making the award, to be written on the foot or on the back of the order of the justice appointing the arbitrators.

WE, A. B. *and* C. D. *parties to the within arbitration*, *do hereby agree to extend the same to the* —— *day of* —— *inclusive*. *Witness our hands this* —— *day of* ——.

*Witness*, A. B.
C. D.

(III) Form of commitment of a person summoned as a witness. 39 & 40 *Geo*. 3. *c*. 90.

*WHEREAS proof on oath has been made before me* [or us naming the justice, or justices signing the commitment] *one* (or *two*) *of his majesty's justices of the peace for the county* (or *riding*, *city*, *liberty*, *township*, *division*, *or place*) *of* —— *on this* —— *day of* —— *that* A.B. *hath been duly summon-*

And if any person so complaining shall not attend, or send some person on his behalf, at the time and place appointed by such justice, for the purpose of naming such person as aforesaid, such person shall in no case be entitled to the benefit of this act; and if any person, against whom such complaint shall have been made, shall not attend, or send some person on his behalf, the justice shall thereupon nominate a person for him out of such persons so proposed as aforesaid. 41 *Geo.* 3. *c.* 87. *s.* 3.

**Persons complaining not attending, to lose the benefit of the act.**

And in case any of the persons proposed by such justice, shall refuse or delay to accept such arbitration, or accepting, shall not act therein, the justice shall proceed to name another; and in every case of a second nomination, the arbitrators shall meet within 24 hours after the application for the same, and at the same place at which the meeting of the arbitrators first named was appointed. *s.* 4.

**Arbitrators refusing to act, justice to name others.**

And in every case where the arbitrators cannot agree, they shall forthwith go before the justice, by whom they were appointed; and in case of his absence, or indisposition, before any other justice; and if either arbitrator shall neglect or refuse

**Arbitrators not agreeing, and refusing to go before the jus-**

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*ed and hath neglected to appear and give evidence before* C. D. *and* E. F. *the arbitrators appointed by and between* G. H. *and* I. K. *to determine the matters in dispute between them at* ——*in the county*, (or *riding*, *city*, *liberty*, *township*, *division*, *or place*) of —— on the —— day of —— *under and by virtue of an act made in the fortieth year of the reign of his present majesty, intituled, an act* [*here set forth the title of the act*]; *and the said* A. B. *being required by me, the said justice, to give evidence before the said arbitrators, and still refusing so to do, therefore I* (or *we*) *the said justice* (or *justices*) *do hereby in pursuance of the said act, commit the said* A. B. *to the* [*describing the prison or the house of correction*] *there to remain without bail or mainprize for his* (or *her*) *offence aforesaid, until he* (or *she*) *shall submit himself* (or *herself*) *to be examined, and give his* (or *her*) *evidence before the said arbitrators, touching the matters referred to them as aforesaid, or shall otherwise be discharged by due course of law. And you the* [*constable* or *other peace officer or officers to whom the warrant is directed*] *are hereby authorised and required to take into your custody the body of the said A. B. and him or her safely to convey to the said prison* [or *house of correction*] *and him* [or *her*] *there to deliver to the gaoler* [or *keeper*] *thereof, who is hereby authorized and required to receive into his custody the body of the said* A. W. *and him* [or *her*] *safely to detain and keep pursuant to this commitment.* Given under my hand [or our hands] this —— day of —— in the year of our Lord——

tice, the dispute shall be determined by him.

to go before such justice, he may, after summoning the arbitrators to attend him, determine the matter in dispute, upon the statement of either of the arbitrators who shall come before him. *s.* 6.

One arbitrator may make the award, if the other does not attend.

And where a second arbitrator shall be appointed, and such second arbitrator shall not attend at the time and place appointed, the other arbitrator may proceed by himself to the hearing and determining of the matters in dispute, and in such case the award of such sole arbitrator shall be final and conclusive. *s.* 6.

Limiting the time of making complaints.

All complaints by the weaver, as to bad materials, shall be made within three weeks after receiving the same, and all complaints arising from any other cause shall be made within three days after such cause of complaint shall arise; and it shall not be allowable to any manufacturer, who shall have received into his possession any cotton cloth made by himself, or his clerk or foreman, afterwards to make any complaint on account of work so received. *s.* 7.

Complaints respecting bad warps or utensils to be settled near the place of work.

But, in all cases where complaints are made respecting bad warps or utensils by workmen, the place of meeting of the referees shall be at, or as near as may be to the place where the work shall be carrying on; and in all other cases at, or as near as may be to the place where the work has been given out. *s.* 8.

Penalty on refusing to fulfil the award.

And if either party shall refuse to fulfil (IV) the award to be made in pursuance of this act, for the space of 48 hours next after the same shall be made, and have been reduced into writing, the party so neglecting or refusing, shall forfeit 10*l.* to the party in whose favour such award shall have been made;

Recovery of penalty.

to be recovered before one justice, and the conviction for the same may be upon the oath of one witness; and in case such forfeiture shall not be forthwith paid, such justice shall cause the same to be levied by distress and sale, together with all costs attending such distress and sale; and in case no sufficient distress can be had, such justice shall commit the offender to the common gaol, or house of correction, for not exceeding three nor less than two calendar months. 39 & 40 *Geo.* 3. *c.* 90. *s.* 5.

And the justice shall cause all such convictions to be drawn

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(IV) Form of acknowledgment of fulfilment of the award, to be written on the foot or on the back thereof.

I, A. B. *do hereby acknowledge, that the above award hath been fulfilled by* C. D. *who is hereby discharged of the same. Witness my hand, this* ——— *day of* ———.

*Witness,* A. B.

up according to the form in the act (V) and shall cause the same to be fairly written on parchment, and transmitted to the next general sessions, or general quarter sessions, to be filed and kept amongst the records. 39 & 40 *Geo.* 3. *c.* 90. *s.* 6.

But it shall be lawful for any person convicted before any justice to appeal to the justices at the next general sessions, or general quarter sessions, such person giving immediate notice of such appeal, and finding two sureties in 5*l.* each, and entering into his own recognizance before such justice convicting in 10*l.* to appear and prosecute such appeal with effect; and the justices at such general or general quarter sessions are finally to hear and determine such appeal, and to make such order, and to award such costs as they shall see meet; and which order shall be final; and no *certiorari* shall be allowed to remove such proceedings. 39 & 40 *Geo.* 3. *c.* 90. *s.* 7. Appeal.

And with every piece of work given out by the manufacturer to a workman to be done, there shall (if required by the workman to whom the same shall be given) be delivered a note, or ticket, signed by the person delivering out the same, or his agents, stating the quantity of the materials delivered out, and nature of the work to be performed, and the price agreed upon for executing such work, which note or ticket, in the event of dispute between the manufacturer and workmen, shall be evidence of all matters mentioned therein. 44 *Geo.* 3. c. 7. *s.* 10. Tickets stating quantity of materials, &c. to be given out with work.

And a duplicate of every such note, or ticket, shall be made and kept by the master or agent, which shall be evidence of all Duplicate of the ticket to be kept by the master.

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(V) Form of conviction, for refusing or delaying to fulfil the award.

*BE it remembered that on the* ——— *day of* ——— *in the* ——— *year of his majesty's reign, and in the year of our Lord* ——— A. B. *is convicted before me* [or, name the justices of the peace for the county, riding, division, city, or place of———] *that the said* A. B. *has refused or delayed to fulfil the award within the time limited, contrary to the statute made in the* 44th *year of his present majesty, entitled* "*an act to amend an act* "*passed in the thirty-ninth and fortieth year of his present ma-* "*jesty,* entitled *an act for settling disputes that may arise* "*between masters and workmen engaged in the cotton manu-* "*facture in that part of* Great Britain, *called* England." *And I* [or we] *the said justice* [or justices], *do hereby adjudge and determine the said* A. B. *for the said offence to forfeit and lose the sum of* 5*l.* *of lawful money of* Great Britain, *and do order the same to be forthwith paid by him* [her or them *as the case may be*].

the matters therein contained, in case the workman shall not produce to the arbitrators, or the justice, the said note, or ticket, delivered to him with the work. *s.* 11.

Penalty on not giving a ticket.

And every master, or agent, refusing or neglecting to give a note, or ticket, when required, shall forfeit not exceeding 40*s.* nor less than 20*s.* to any person who shall sue for the same, to be recovered and applied in like manner, but that no appeal shall be competent against any conviction for such penalty. 44 *Geo.* 3. *c.* 87. *s.* 12.

Complaints may be made against agents or partners.

But, where any work shall have been delivered to any workman, by the agent or servant of any master, to be, when finished, delivered to such agent or servant, and also where two or more persons shall carry on the business as partners, the like proceedings may be had, against such agent, servant, or any partner, as if the same had been had against the principal, or all the partners: and all the said persons shall obey the award made thereupon, and shall be subject to the pains, penalties, and forfeitures, for refusing or delaying to perform the same. *s.* 13.

How proceedings may be had against bankrupts.

In all cases where any proceedings may be had against a master, or where such proceedings shall have been commenced, and the master shall become bankrupt, or any assignment of his estate or effects shall have been made under the said bankruptcy, or otherwise by deed, or in law, the assignees shall be liable to the proceedings authorized by this act against the master, who shall abide by the award, and all such orders shall be made by the justices, and shall be subject to the same pains, penalties, and forfeitures, for refusing or delaying to abide by the same, as if the proceedings had been had against the master, but to be recoverable only out of the estate or effects of such master, and not out of the proper money of such assignees. *s.* 14.

Complaints of married women and infants.

And where any married woman, or infant under the age of 21 years, shall have cause of complaint against any master, his agent or servant, or assignees, such complaint may be lodged, and all further proceedings thereupon had, in the name of the husband, and of the father, or, if dead, of the mother, or, if on the death of both parents, of any of the kindred of such infant, and of the surety in any indenture. *s.* 15.

Costs to be settled by arbitrators or justices.

And all costs, time, and expences, attending the applications to justices, and of the arbitration, shall be settled by the arbitrators; and where the same shall be determined by any justice, pursuant to the 39 and 40 *Geo.* 3. *c.* 90, then the costs, time, and expences aforesaid, shall be settled by him; and where the arbitrators appointed as aforesaid, cannot agree as to the costs, time, and expences to be allowed, the same shall be settled by the justice, by whom the said arbitrators were named: and in case of his absence or indisposition, by any justice for the same county, or place. *s.* 16.

And the following and no higher fees shall be allowed to be taken for any proceeding under this act; *videlicet*,

Fees to be allowed.

| | L. | s. | d. |
|---|---|---|---|
| To the clerk of the justice or justices, | | | |
| For each summons - - - | — | — | 6 |
| For every oath or affirmation - - | — | — | 6 |
| For drawing and entering the order | — | — | 6 |
| For every warrant - - - | — | 1 | — |
| For every conviction - - - | — | 1 | — |
| To the constable or other peace officer, | | | |
| For service of summons or order - - | — | — | 6 |
| For executing warrant of distress and sale of goods - - - - - | — | 1 | 6 |
| For custody of goods distrained, *per diem* | — | — | 4 |
| For every mile he shall travel - - | — | — | 4 |

And a table of fees, signed by the clerk to such justice, shall be hung up in every place where any general or quarter sessions, or petty sessions of the peace shall be held. *s.* 17.

Proceedings not to be quashed for want of form.

And no proceedings under this act, shall be set aside or quashed for want of form. *s.* 18.

Limitation of actions.

No action shall be brought against any arbitrator, justice, constable, headborough, or other officer, or against any other person whomsoever, for any thing done by virtue of this act, unless brought within six calendar months. 39 & 40 *Geo.* 3. c. 90. *s.* 8.

Cotton weavers not to act as justices.

No justice of the peace, being also a master cotton weaver or manufacturer, shall act under this act. 39 & 40 *Geo.* 3. *c.* 90. *s.* 10.

Former acts to remain in force.

Also, nothing in this act shall extend to repeal, abridge, annul, or make void any of the clauses in the acts of 1 *Anne*, st. 2. c. 18.; 13 *Geo.* 2. *c.* 8.; 22 *Geo.* 2. *c.* 27.; 17 *Geo.* 3. *c.* 56, or of any other act, so far as the same inflict any pains, penalties, and punishments upon such workmen, and so far as the same provide any remedy to the masters against the workmen engaged in the said trade or manufacture (except where such remedy relates to wages). 39 & 40 *Geo.* 3. *c.* 90. *s.* 11.

How disputes between masters and their journeymen in general, may be settled by arbitration.

By 39 & 40 *Geo.* 3. *c.* 106, In all cases that shall arise within *England*, where the masters and workmen cannot agree respecting the price to be paid for work done, or any injury done by the workmen, or respecting any delay on the part of the workmen, in finishing the work, or the not finishing such work in a good and workmanlike manner, or according to any contract; and in all cases of dispute touching any contract for work or wages between masters and workmen in any trade or manufacture, which cannot be otherwise mutually adjusted between them, it shall be lawful for such masters and workmen or either of them, to demand and have an arbitration or reference of such matter in dispute, and each is empowered to appoint

(VI) an arbitrator on his part by writing, subscribed by him in the presence of one witness, and to deliver the same personally to the other party, or leave the same for him at his usual abode, and to require the other party to name an arbitrator in like manner within two days, and such arbitrators so appointed, after they shall have accepted the arbitration, are to summon before them, and examine upon oath, the parties and their witnesses (which oath the arbitrators are to administer according to the form) (VII) and forthwith to proceed to hear the complaints, and the award by such arbitrators within the time herein-after limited shall be conclusive between the parties; but in case such arbitrators shall not agree to decide such matter in dispute, and shall not make their award within three days after the signing of the submission by the parties, then it shall be lawful for the parties, or either of them, to require such arbitrators to go before one justice of the peace, and state to such justice the points in difference between them, which points the said justice shall hear and determine, and for that purpose examine the parties and their witnesses upon oath; which determination of such justice shall be made and signed within three days after the expiration of the time allowed the arbitrators to make and sign their award, and shall be final between the parties; and if either of the said parties, or their witnesses,

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(VI) FORM of the SUBMISSION to ARBITRATION, and of the award to be made in pursuance of this act.

*I* A. B. *of*, &c. [*set forth the name, residence, and description of the party*], *do hereby nominate and appoint* C. D. *of*, *&c. an arbitrator under and by virtue of an act passed in the thirty-ninth and fortieth years of the reign of king* George *the Third, intituled, An Act* [*set forth the title of the act*], *to hear and determine the matters in difference between me and* E. F. *of, &c.*

*I* E. F. *of, &c. do appoint* G. H. *of, &c. to be an arbitrator under the said act for the purposes aforesaid.*

(VII) FORM of the OATH, to be administered by the arbitrators to the parties and witnesses under this act.

*The evidence that you shall give before us the arbitrators appointed by* A. B. *and* C. D. [*the parties to the submission*], *to determine the matters in difference between them, under and by virtue of an act passed in the thirty-ninth and fortieth years of the reign of king* George *the Third, intituled, An Act* [*state the title of the act*], *shall be the truth, the whole truth, and nothing but the truth.*

So help you GOD.

having been duly summoned, shall neglect or refuse to attend such arbitrators, it shall be lawful for one justice, upon proof on oath of the service of such summons personally, and also upon the like proof of the neglect or refusal of such person to attend the arbitrators (unless a reasonable excuse be made to the satisfaction of such justice), to issue his warrant for apprehending such person; and if such person being brought before such justice shall still refuse to be examined, or to give his testimony before such arbitrators, such person shall be by such justice committed (VIII) to the house of correction, there to remain

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(VIII) FORM of COMMITMENT of a person summoned as a witness before the arbitrators.

*WHEREAS proof on oath hath been made before us* [*naming the justices signing the commitment*] *two of his majesty's justices of the peace for the county* [or *riding, city, liberty, division, or place*] *of* ——— *on this* ——— *day of* ——— *that* A. B. *hath been duly summoned, and hath neglected to appear and give evidence before* C. D. *and* E. F. *the arbitrators appointed by and between* G. H. *and* I. K. *to determine the matters in dispute between them at* —— *in the county* [or *riding, city, liberty, division, or place*] *of* ——— *on the* ——— *day of* —— *under and by virtue of an act, made in the thirty-ninth and fortieth years of the reign of king* George *the* Third, *intituled, An Act* [*here set forth the title of the act*]; *and the said* A. B. *being required by us the said justices, to give evidence before the said arbitrators, and still refusing so to do, therefore we the said justices do hereby, in pursuance of the said act, commit the said* A. B. *to the* [*describing the prison, or the house of correction*], *there to remain without bail or mainprize for his* [or *her*] *offence aforesaid, until he* [or *she*] *shall submit himself* [or *herself*] *to be examined, and give his* [or *her*] *evidence before the said arbitrators, touching the matters referred to them as aforesaid, or shall otherwise be discharged by due course of law. And you the* [*constable* or *other peace officer or officers to whom the warrant is directed*] *are hereby authorized and required to take into your custody the body of the said* A. B. *and him* [or *her*] *safely to convey to the said prison* [or *house of correction*], *and him* [or *her*] *there to deliver to the gaoler* [or *keeper*] *thereof, who is hereby authorized and required to receive into his custody the body of the said* A. B. *and him* [or *her*] *safely to detain and keep pursuant to this commitment.*

Given under our hands this ——— day of ——— in the year of our Lord ——

This commitment to be directed to the proper peace officer and the gaoler [or keeper] of the prison [*or* house of correction].

without bail or mainprize until he shall submit to be examined before the arbitrators, or until the time of making an award shall be expired. *s.* 18.

Parties may extend the time for making the award.

But if the parties who shall have signed any submission to arbitration shall think it expedient to extend the time limited for making of the award or umpirage, they may extend the same accordingly, by indorsement on the back of such submission, to be signed by both in the presence of one witness. *s.* 19.

Form of the award.

Also, the submission to arbitration, and the award (IX) or umpirage made thereon, may be drawn up at the foot of such submission upon unstamped paper. *s.* 20.

Duplicates of award.

Also there shall, in all cases, be engrossed two parts of the submission, one for each of the parties. *s.* 21.

Penalty on parties refusing to name arbitrators or to abide by the award.

In every case of dispute, if an arbitration shall be demanded, and the submission signed, and an arbitrator therein named by either of the parties, and the other shall refuse or neglect to sign the submission and appoint his arbitrator within the time before limited, the parties neglecting or refusing, shall each and every of them, if more than one, on conviction (X) before two jus-

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(IX) FORM of the AWARD OR UMPIRAGE to be made by the arbitrators or umpire, and to be written at the foot of the submission.

*We* I. K. *and* L. M. *of, &c. the arbitrators above named* [or *I* N. O. *the justice, as the case may be*], *do hereby adjudge and determine that, &c.* [*here set forth the determination, to which the arbitrators or justice, as the case may be, shall subscribe their names*].

Witness,

*P. Q.*

(X) FORM of CONVICTION in a PECUNIARY PENALTY.

*BE it remembered, That on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and in the year of our Lord* ——— A. B. *is convicted before us* [*naming the justices*], *two of his majesty's justices of the peace for the county* [or *riding, city, liberty, division, or place*], *of* ——— *for that the said* A. B. [*state the offence, as for neglecting to sign the submission, or refusing to submit to the award within the time limited, as the case may be*], *contrary to the statute made in the thirty-ninth and fortieth years of the reign of king* George *the* Third, *intituled, An Act* [*here set forth the title of the act*], *and we the said justices do hereby adjudge and determine the said* A. B. *for the said offence, to forfeit and lose the sum of* ——— *of lawful money of* Great Britain, *and do order the same to be forthwith paid by him* [*her*, or *them*, *as the case may be*].

C. D.

tices, forfeit 10*l.* one moiety to his majesty, and the other to the poor of the parish; and in case any such forfeiture shall not be forthwith paid, such justices shall cause the same to be levied by distress and sale, together with all costs attending such distress and sale: and in case no sufficient distress can be had, such justices shall commit the offenders to the common gaol, or some house of correction, there to remain for not exceeding three nor less than two calendar months; and if either party shall refuse to perform what by any such award or umpirage he shall be directed, and shall thereof be convicted before two justices, such justices may commit the offender to the common gaol or house of correction, there to remain until he shall fully perform such award or umpirage: but nothing in this act shall extend to make any person guilty of any offence in not attending at more than one arbitration at the same time, or more than two in one day; and any master not actually resident may authorize any person to act for him, in signing submissions to arbitration, and attending arbitrators or justices. *s.* 22.

Appeal, and manner thereof.

If any person convicted of any offence shall think himself aggrieved, such person may appeal to the next general or general quarter sessions, and the execution of the judgment shall be suspended in case he shall immediately enter into a recognizance before such justices, himself in 10*l.* with two sureties in 5*l.* each, upon condition to prosecute such appeal with effect, and to be forth-coming to abide the judgment of the sessions, and to pay costs, and the sessions are to hear and determine the appeal, and to award costs, which decision shall be final; and if, upon the hearing the appeal, the judgment of the justices shall be affirmed, such appellant shall forthwith pay the forfeiture (if any) and the costs, and in default, or in case such conviction shall contain a judgment of imprisonment, such appellant shall immediately be committed by the said court to the gaol or house of correction, according to such conviction, and for the time therein mentioned, without bail, and also until the costs be paid. *s.* 23.

*Marriage.—See* FELONY (*within Clergy, sec. Marriage, and sec. Polygamy*).—FELONY (*without Clergy, sec. Forgeries,* 5).

*Marriages.*—Stamp duty on.—*See* STAMPS.

*Master and Servant.—See* APPRENTICES; FELONY (*within Clergy, sec. Servants*). SERVANTS.

*Mayhem.—See* FELONY.

*Mayors.—See* JUSTICES OF PEACE.

*Measures.*—*See* WEIGHTS AND MEASURES.

*Medicines.*—Stamp duty on.—*See* STAMPS.

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# MILITIA.

IT seems universally agreed by all historians, that king *Alfred* first settled a national militia in this kingdom; though we are left in the dark as to the particulars of this, his so celebrated regulation for securing the public peace, and protecting the realm against foreign or domestic violence. 1 *Black. Com.* 410. 413.

Upon the *Norman* conquest, however, the feodal law was introduced here in all its rigour; and in consequence thereof, all the lands in the kingdom were divided into what were called knight's fees, in number above sixty thousand; and for every knight's fee a knight or soldier was bound to attend the king in his wars for forty days in a year; in which space of time, before war was reduced to a science, the campaign was generally finished, and a kingdom either conquered or victorious. 1 *Black. Com.* 410.

And that in the mean time the kingdom might not be left wholly without defence in case of domestic insurrections, or the prospect of foreign invasions; besides those who by their military tenures were bound to perform forty days service in the field, first the assize of arms, enacted 27 *Hen.* 2. and afterwards the statute of *Winchester**, under *Ed.* 1, obliged every man, according to his estate and degree, to provide a determinate quantity of such arms as were then in use, in order to keep the peace: and constables were appointed in all hundreds by the latter statute, to see that such arms were provided. These weapons were changed, by the statute 4 and 5 *Ph.* & *Mar.* *c.* 2. into others of more modern service: but both this and the former provisions were repealed in the reign of *James* I. † 1 *Black. Com.* 411.

While these continued in force, it was usual from time to time for our princes to issue commissions of array, and send into every county, officers in whom they could confide, to muster and array (or set in military order) the inhabitants of every district; and the form of the commission of array was settled in

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* 13 *Ed.* 1. *c.* 6.

† See the statutes 1 *Jac.* 1. *c.* 25, and 21 *Jac.* 1. *c.* 28.

parliament in the fifth year of *Hen.* 4, so as to prevent the insertion therein of any new penal clauses. But it was also provided * that no man should be compelled to go out of the kingdom at any rate, nor out of his shire but in case of urgent necessity, nor should provide soldiers unless by consent of parliament. 1 *Black. Com.* 411.

About the reign of *Hen.* 8, or his children, *lieutenants* began to be introduced, as standing representatives of the crown, to keep the counties in military order; and the introduction of these commissions of *lieutenancy*, which contained in substance the same powers as the old commissions of array, caused the latter to fall into disuse. 1 *Black. Com.* 412.

In this state things continued, till the repeal of the statutes of armour, in the reign of king *James* the First: after which, when king *Charles* the First had during his northern expeditions issued commissions of lieutenancy, and exerted some military powers, which having been long exercised were thought to belong to the crown, it became a question in the long parliament, how far the power of the militia did inherently reside in the king; being then unsupported by any statute, and founded only upon immemorial usage. This question, long agitated with great heat and resentment on both sides, became at length the immediate cause of the fatal rupture between the king and his parliament; the two houses not only denying this prerogative of the crown, but also seizing into their own hands the entire power of the militia. 1 *Black Com.* 412.

However, soon after the restoration of king *Charles* the Second, when the military tenures were abolished it was thought proper to ascertain the power of the militia; to recognize the sole right of the crown to govern and command them, and to put the whole into a more regular method of military subordination. 1 *Black. Com.* 412.

Since that period, the raising of the militia hath been regulated by divers statutes; but those having become inconveniently numerous, it was in 42 *Geo.* 3. found expedient to repeal all former acts, and comprise the several powers and provisions necessary for raising, training, and regulating the militia in one act of parliament.

*These powers and provisions are comprised in the* stat. 42 *Geo.* 3. *c.* 90, and with those granted by subsequent acts, will be arranged in the following order:

## *I. The manner of appointing lieutenants, deputy lieutenants, and officers, and their qualifications.*

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* See the statutes 1 *Ed.* 3. *st.* 2. *c.* 5. *Ed.* 1. *st.* 2. *c.* 7. and 25 *Ed.* 3. *st.* 5. *c.* 8.

*II. Numbers of men to be raised in the respective counties.*

*III. General meetings of the lieutenancy, and issuing precepts to constables to return lists of persons liable to serve in the militia.*

*IV. Subdivision meetings in general.*

*V. First subdivision meeting for receiving of lists, and settling thereof.*

*VI. Second subdivision meeting for proportioning the number to serve in each parish.*

*VII. Third subdivision meeting for balloting.*

*VIII. Fourth subdivision meeting for swearing and inrolling.*

*IX. Forming the militia into regiments and battalions.*

*X. Training and annual exercise.*

*XI. Not appearing at, or deserting from, annual exercise.*

*XII. Drawn out and embodied.*

*XIII. Supplementary militia.*

*XIV. Relief for the families of militia men when drawn out into actual service.*

*XV. Raising the militia within particular places.*

XVI. *Annual certificates that the militia has been raised.*

XVII. *Privileges of militia men.*

XVIII. *Recovery of penalties inflicted by the militia act; and general powers.*

XIX. *Pay and clothing of the militia when unembodied.*

XX. *Allowances to reduced adjutants and serjeant-majors, and to subaltern officers in the militia.*

XXI. *Reduction of the militia.*

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*I. The manner of appointing lieutenants, deputy-lieutenants and officers, and their qualifications.*

His majesty may appoint *lieutenants* for the counties, ridings, and places herein after mentioned (*who are to have the chief command of the militia within the county or place to which they are appointed*, s. 5.), who shall call together, arm, array, and cause to be trained and exercised, such persons, and in such manner as herein after directed, once in every year;—and the said lieutenants shall appoint (twenty persons at the least, qualified as after directed, if so many can be found; but if not, then as many persons qualified as can be found, *s.* 5.) living within their counties, to be their deputy-lieutenants (the names of such persons *having* been first presented to and approved by his majesty);—and shall also appoint colonels, lieutenant-colonels, majors, and other officers, to train, discipline, and command the persons so to be armed and arrayed, according to the directions herein after mentioned—and shall certify to his majesty the names and ranks of all such officers appointed; and in case his majesty shall, within fourteen days after, signify his disapprobation of any of the persons appointed, the said lieutenants shall not grant a commission to any person so disapproved, but commissions shall be granted to all who shall not be disapproved; and the officers so appointed for the militia shall rank with the officers of his majesty's other forces as youngest of their rank. 42 *Geo.* 3. c. 90, *s.* 2.

Appointment of lieutenants.

Deputy lieutenants.

Officers.

Rank of officers.

And when the lieutenant of any county shall be out of *Great Britain*, or when there shall be no lieutenant, his ma-

Three deputy lieutenants may

act when the lieutenant is out of the kingdom. jesty may authorize any three deputy-lieutenants to grant commissions to officers upon any vacancy that shall then happen, as such lieutenant could, and to do all other acts which might have been done by the lieutenant. *s.* 3.

But no commission of any deputy-lieutenant, nor of any officer in the militia, already granted or to be granted, by any lieutenant, or deputy-lieutenants, shall be vacated by revocation, expiration, or discontinuance of the commission by which any lieutenant, or deputy lieutenants were appointed. *s.* 4.

Qualification of deputy lieutenants in England in general.

And all deputy-lieutenants, and officers of militia (except within the counties of *Cumberland*, *Huntingdon*, *Monmouth*, and *Westmorland*, *the isle of Ely* in the county of *Cambridge*, the counties within *Wales*, and such cities and towns as are counties within themselves), shall be qualified as follows:

*Every deputy-lieutenant*, shall be seised or possessed either in law or equity, for his own use, of a freehold, copyhold, or customary estate for life, or for the life of his wife, she having a freehold, copyhold, or customary estate for life, or for some greater estate, or of an estate for some long term of years, determinable on one or more life or lives, in manors, messuages, lands, tenements, or hereditaments, in *England*, *Wales*, or the town of *Berwick upon Tweed*, of the yearly value of 200*l.* or shall be heir apparent of some person who shall in like manner be seised or possessed of a like estate as aforesaid, of the yearly value of 400*l.*

Colonels.

EVERY COLONEL, of a like estate of yearly value of 1000*l.* or heir apparent, of 2000*l.*

Lieutenant-colonels.

EVERY LIEUTENANT-COLONEL, a like estate of the yearly value of 600*l.* or heir apparent, of 1200*l.*

Majors.

EVERY MAJOR, a like estate of the yearly value of 400*l.* or heir apparent, of 800*l.*

Captains.

EVERY CAPTAIN, a like estate of the yearly value of 200*l.* or heir apparent, of 400*l.* or a younger son of some person who shall be, or at the time of his death was seised of a like estate of the yearly value of 600*l.*

Lieutenants.

EVERY LIEUTENANT, a like estate of the yearly value of 50*l.* or possessed of a personal estate alone of 1000*l.* or seised or possessed of real and personal estate together, of the value of 2000*l.* or son of some person who shall be or at the time of his death was seised or possessed of a like estate of the yearly value of 100*l.* or shall be, or who at the time of his death was possessed of a personal estate alone, of 2000*l.* or of real and personal estate together to the value of 3000*l.*

Ensigns.

Every *ensign*, a like estate of the yearly value of 20*l.* or possessed of a personal estate alone of 500*l.* or seised and possessed of a real and personal estate together, to the amount of 1000*l.* or son of some person seised or possessed of a like estate of the yearly value of 50*l.* or of a personal estate alone of 1000*l.* or of real and personal estate together to the amount of 1500*l.*

Of which said estates, required as qualifications for deputy lieutenants, colonels, lieutenant-colonels, majors, and captains, one moiety shall be situate or arising within the counties in which they shall be appointed to serve. *s.* 6.

The estates requisite for a qualification within the counties of *Cumberland*, *Huntingdon*, *Monmouth*, *Westmorland*, and *Rutland*, and within every county and place in *Wales*, shall be as follows: Qualification in smaller counties.

A *deputy-lieutenant* shall in like manner be seised or possessed of a like estate as aforesaid, of the yearly value of 150*l.* or heir-apparent, to 100*l.*

A *colonel*, a like estate of the yearly value of 600*l.* or heir apparent, of 1200*l.*

A *lieutenant-colonel* or *major commandant*, a like estate of the yearly value of 400*l.* or heir apparent, of 800*l.*

A *major*, a like estate of the yearly value of 200*l.* or son of a person seised or possessed of a like estate of the yearly value of 400*l.*

A *captain*, a like estate of the yearly value of 150*l.* or son of a person seised or possessed of a like estate of the yearly value of 300*l.*

A *lieutenant*, a like estate of the yearly value of 30*l.* or personal estate alone to the amount of 600*l.* or real or personal estate together to the amount of 1200*l.* or son of a person seised or possessed of a like estate of the yearly value of 60l. or personal estate alone of the amount of 1200*l.* or real and personal estate together, of the value of 2400*l.*

An *ensign*, a like estate of the yearly value of 20*l.* or a personal estate alone to the amount of 300*l.* or real and personal estate together, to the value of 600*l.* or son of a person seised or possessed of a like estate as aforesaid, of the yearly value of 30*l.* or of a personal estate alone to the amount of 600*l.* or real and personal together of the value of 1200*l.*

Of all which estates (except lieutenants and ensigns) one moiety shall be situate or arising within the counties in which such officers shall be appointed to serve. *s.* 7

In the *Isle of Ely*, a *deputy-lieutenant* shall be in like manner seised or possessed of a like estate as aforesaid, of the yearly value of 150*l.* or heir apparent, of 300*l.* In the Isle of Ely.

A *captain*, a like estate of the yearly value of 100*l.* or heir apparent, of 200*l.* or younger son of some person seised or possessed of a like estate as aforesaid, of the yearly value of 300*l.*

A *lieutenant* a like estate of the yearly value of 30*l.* or possessed of a personal estate to the amount of 600*l.* or son of some person seised or possessed of a like estate of the yearly value of 60*l.* or possessed of a personal estate to the amount of 1200*l.*

An ensign a like estate of the yearly value of 20*l.* or possessed of a personal estate to the amount of 300*l.* or son of some person seised or possessed of a like estate as aforesaid, of the

yearly value of 30*l.* or possessed of a personal estate to the amount of 600*l.*

Of all which estates (except lieutenants and ensigns) one moiety shall be within the said *Isle of Ely*, or county of *Cambridge.* *s.* 8.

In cities and towns, counties themselves.

In all cities and towns, counties within themselves, and heretofore empowered by law or ancient usage to raise a separate militia, and which are united with any county for the purposes of raising the militia only, the *lieutenant* of every such city or town, or, where there is no lieutenant appointed, then the chief magistrate, shall appoint the deputy-lieutenants, and also officers of the militia, whose number and rank shall be proportionable to the number of militia-men which such city or town shall raise as their quota towards the militia of the county to which such city or town is united; and all provisions by this act, with respect to counties at large, and the registering hereinafter directed of the qualifications of deputy lieutenants and officers, shall take place, with respect to the said cities, *&c.* and the militia thereof, and the registering of the said qualifications; and the value of the qualifications of deputy lieutenants and officers shall be as follows:

Every *deputy-lieutenant* shall be seised or possessed of a like estate as aforesaid, of the yearly value of 150*l.* or possessed of a personal estate alone, or real and personal together, of the value of 3000*l.*

Every *field officer*, a like estate of the yearly value of 300*l.* or a personal estate alone, or real and personal estate together, of the value of 5000*l.*

A *captain*, a like estate of the yearly value of 150*l.* or personal estate alone, or real and personal together, of the value of 2500*l.*

A *lieutenant*, a like estate of the yearly value of 30*l.* or personal estate alone of the value of 750*l.*

An *ensign*, a like estate of the yearly value of 20*l.* or personal estate alone to the value of 400*l.*

Of all which real estates (except lieutenants and ensigns) one moiety shall be within such city or town, or within the county to which such city or town is united. *s.* 9.

How value of reversions to be computed as qualifications.

The immediate reversion or remainder of and in manors, messuages, lands, tenements or hereditaments, leased for one life, or two or three lives, or term of years determinable upon lives, on reserved rents, and which are to the lessee of the clear yearly value of 300*l.* shall be deemed equal to an estate before required as a qualification of the yearly value of 100*l.* and so in proportion. *s.* 10.

What leaseholds deemed qualifications.

And a person possessed, either in law or equity, for his own use, of an estate for a certain term, originally granted for twenty years, or more, of an annual value (over and above all rents and charges payable out of the same) equal to the value of such

an estate as is required for the qualification of a deputy lieutenant and commissioned officer of the militia, and situate as aforesaid, shall be sufficiently qualified to act in the execution of this act. *s.* 11.

No commission superior to a lieutenant to be granted till the qualification is delivered in.

And no person shall be appointed deputy-lieutenant, or to a higher rank in the militia than that of lieutenant, until he shall have delivered in to the clerk of the peace, or (in his absence) to his deputy, a specific description in writing, signed by himself of his qualification, stating the parish in which the estate is situate; and the clerk of the peace, or his deputy, shall transmit to the lieutenant of the county, a copy of such description; and no commission granted for a higher rank than lieutenant shall be valid, unless it be declared in the commission that the officer hath delivered in his qualification as above. *s.* 12.

Qualifications to be inserted in the Gazette, and lists to be annually laid by the secretary of state before parliament.

And the clerk of the peace shall enter the qualifications transmitted to him according to this act, upon a roll, kept for that purpose, and cause to be inserted, in the *London Gazette*, the dates of the commissions, and names and rank of the officers, together with the names of the officers in whose room they are appointed, as commissions in the army are published from the War-office, and he is to charge the expense of such insertion to the treasurer of the county, who is to pay the same; and the said clerk of the peace, or his deputy, shall, in *January* every year, transmit to one of the secretaries of state a complete account of the qualifications left with him, and the secretary shall cause copies thereof to be annually laid before both houses of parliament; and every deputy-lieutenant, and commissioned officer, not having taken and subscribed the oaths, and made, repeated, and subscribed the declaration, as required by this act, shall, at some general quarter-session of the peace, or in a court of record at *Westminster*, within six months after he shall have accepted his commission, take the oaths appointed to be taken by 1 *Geo.* 1, and 6 *Geo.* 3*, and shall also make, repeat, and subscribe the declaration in 1 *Geo.* 1, as other persons qualifying for offices. *s.* 13.

Deputy lieutenants and officers to take the oaths.

Penalty on acting not being qualified.

And if any person shall execute any of the powers directed to be executed by deputy-lieutenants, colonels, lieutenant-colonels, or majors, not qualified, or without having delivered in his qualification as before required, such person shall forfeit 200*l.*; and every captain 100*l.*; one moiety whereof shall go to the use of the person who shall sue; and in every action, suit, or information, the proof of his qualification shall lie upon the person against whom the same is brought. *s.* 14.

But nothing in this act shall restrain any peer of the realm, or heir apparent of such peer, from being appointed, or acting

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* In the printed case the above statute is by mistake referred to as in an act of 36 *Geo.* 3. instead of the 6th.

as a deputy-lieutenant, or a commissioned officer, in the militia, within the county, wherein he shall have some place of residence, although he may not have the qualification required; or oblige any peer, or his heir apparent, who shall be appointed a deputy-lieutenant or commissioned officer, to leave with the clerk of the peace any qualification in writing. *s.* 14.

And no commission in the militia shall vacate the seat of any member returned to serve in parliament. *s.* 172.

How deputy-lieutenants and officers may be discharged.

His majesty may signify his pleasure to his lieutenant of any county to displace all or any deputy lieutenants and officers, and, thereupon the lieutenants shall forthwith displace such deputy-lieutenants or officers, and appoint others with like qualifications in their stead. *s.* 17.

*II. Number of men to be raised in the respective counties.*

The number of private men to be raised by this act shall be as follows: 26 *Geo.* 3. *c.* 107. *s.* 17.

| | | |
|---|---|---|
| For the county of | Bedford | 317 |
| | Berks | 561 |
| | Bucks | 599 |
| | Cambridge | 481 |
| | Chester and city | 885 |
| | Cornwall | 647 |
| | Cumberland | 615 |
| | Derby | 939 |
| | Devon and Exeter | 1512 |
| | Dorset, with the Island of Purbeck and town of Poole | 411 |
| | Durham | 492 |
| | Essex | 1244 |
| | Gloucester, city, and Bristol | 1163 |
| | Hereford | 520 |
| | Hertford | 430 |
| | Huntingdon | 159 |
| | Kent and Canterbury | 1296 |
| | Lancaster | 2439 |
| | Leicester | 643 |
| | Lincoln and city | 1368 |
| | Middlesex (except the Tower Hamlets) | 3038 |
| | Monmouth | 280 |
| | Norfolk and Norwich | 1209 |
| | Northampton | 724 |
| | Northumberland, Newcastle, and Berwick | 649 |
| | Nottingham and town | 564 |
| | Oxford | 603 |
| | Rutland | 83 |

| | | |
|---|---|---|
| | Salop | 991 |
| | Somerset | 1556 |
| | Southampton and town | 850 |
| | Stafford and Lichfield | 1133 |
| | Suffolk | 1042 |
| | Surrey | 1336 |
| | Sussex | 803 |
| | Warwick and Coventry | 853 |
| | Westmoreland | 243 |
| | Worcester and city | 616 |
| | Wilts | 917 |
| | York, the West Riding of, and city | 2429 |
| *The North Riding* | | 911 |
| *The East Riding*, and Kingston upon Hull | | 564 |
| For the county of | Anglesea | 128 |
| | Brecknock | 204 |
| | Cardigan | 244 |
| | Carmathen and borough | 405 |
| | Carnarvon | 128 |
| | Denbigh | 344 |
| | Flint | 201 |
| | Glamorgan | 403 |
| | Merioneth | 121 |
| | Montgomery | 279 |
| | Pembroke and Haverfordwest | 201 |
| | Radnor | 140 |

And such numbers of private militia-men shall continue to be the respective quotas of the several counties, until the 25th of *June* 1805, and from thence until other quotas shall be settled and appointed by the privy council, in manner herein-after directed; and the several quotas that shall at the first mentioned period, and also from time to time at the expiration of every successive 10 years after such period, be so settled and appointed by the privy council, shall from the appointment thereof continue to be the respective quotas of such counties and places, until other quotas shall be settled and appointed under this act. s. 20.

Such numbers to continue the quotas until June 25, 1805, and the numbers thereafter appointed by the privy council to continue the quotas until others shall be settled.

The privy council shall on or before the 25th of *June* 1805, and afterwards, at the expiration of every succeeding period of 10 years, take into consideration the number of men fit and liable to serve in the militia, and shall forthwith fix the number of militia men who shall, for the next succeeding 10 years, serve for each county and place, as near as may be by the proportion that the number of men fit and liable to serve shall bear to the whole number of militia-men by this act directed to be raised; and shall thereupon transmit the numbers so fixed

The privy council, by 5th June 1805, and every 10 years after, to fix the quota, and transmit the numbers to the county lieutenants.

and settled, to the respective lieutenants of the counties, and shall cause notice of the same to be thrice printed in the *London Gazette*. s. 38.

Where the number fixed shall be greater than the former quota, the general meeting shall appoint what number shall be chosen for each division;

And where the number of militia-men so fixed shall be greater than the former quota, the lieutenant for such county, together with two or more deputy-lieutenants, and on the death or removal, or in the absence of the lieutenants, any three or more deputy-lieutenants, shall, at a general meeting to be holden for that purpose, appoint what number of militia-men shall serve for each hundred, rape, lathe, wapentake, or other division; and the additional number of militia-men, to make up the whole number so fixed and settled as aforesaid, shall be provided or chosen in the same manner as other militia men are by this act to be provided and chosen; and all the additional men so provided or chosen, or their substitutes, and also all volunteers, shall take the oath by this act required to be taken, and shall be enrolled, or sign their consent to serve in the militia, in such manner as is directed by this act, and in case of refusal shall be subject to the same penalties as in like cases are inflicted by this act: Provided always, that where the number of militia-men so fixed and settled, shall be less than the former quota of such county or place, the lieutenants, together with any two or more deputy-lieutenants, or (on the death, or removal, or in the absence of the lieutenant) any three or more deputy-lieutenants shall, at a general meeting to be held for that purpose, dismiss to their own homes by ballot, proportionally out of each respective hundred, rape, lathe, wapentake, or other division, so many militia-men as shall exceed the number so fixed and settled as aforesaid; and the several persons so dismissed as aforesaid shall remain liable to serve in the militia, and shall and are hereby required to join any regiment, battalion, or corps of militia serving for the county, riding, or place, from the militia of which they shall have been dismissed, whenever called upon so to do, for the purpose of supplying vacancies that may arise in the said militia; and the names of all the persons so dismissed as aforesaid shall be entered in a list; and the deputy-lieutenants shall cause the men necessary for supplying any vacancies that may thereafter arise in the militia of such county, riding, or place, to be ballotted for out of the persons contained in any such list as aforesaid, while fit persons can be found to supply such vacancies, and so from time to time as occasion shall require, so long as any of the persons contained in any such list can be found fit to supply such vacancies as aforesaid; and every person so balloted to supply such vacancy, who shall not be unfit by reason of sickness or bodily inability, shall serve in the militia, upon the conditions and for the remainder of the time for which such person shall have been engaged to serve in such militia before he was dismissed as aforesaid; and whenever and as

and where the number shall be less, shall dismiss the excess by ballot.

Men dismissed liable to serve.

soon as all persons returned in any such list that can be found fit to supply such vacancies as aforesaid, shall by ballot have supplied such vacancies as aforesaid, the men necessary for supplying such future vacancies as may arise in such militia, shall be raised, chosen, and ballotted for in manner directed by this act. *s.* 39.

### *III. General meetings of the lieutenancy, and issuing precepts to constables to return lists of persons liable to serve in the militia.*

His majesty's lieutenant shall appoint a clerk* of the general meetings, and may displace such clerk, and appoint another in his room. 42 *Geo.* 3. *c.* 90. *s.* 18. Clerk of general meetings.

And general meetings of the *lieutenancy* of every county, riding, and place, shall be holden in some principal town of every such county; and shall consist of the lieutenant, with two deputy-lieutenants, or, on the death or removal, or in absence of the lieutenant, of three deputy-lieutenants, and one such meeting shall be holden within every county, annually upon the last *Tuesday* before the 24th of *October* in every year, and the lieutenant, with two deputy-lieutenants, or (on the death, &c. of the lieutenant) three deputy-lieutenants, as often as they find necessary, may summon other general meetings, on days to be fixed by such summons, of which notice shall be given in the *London Gazette*, and also in any weekly newspaper circulated in such county, fourteen days before the holding such meetings; and they are authorized to charge the expense of such notices to the treasurer of the county, who is to pay the same; and in case any annual or other general meeting shall not be attended by the lieutenant and two deputy-lieutenants, or three deputy lieutenants, the lieutenant, or one deputy-lieutenant, may adjourn the same; and in case no deputy-lieutenant shall attend, then the clerk of the general meeting, or his deputy, shall adjourn such meeting. *s.* 21. General meeting of the lieutenancy to be on *Oct.* 24, annually.

And the lieutenant and deputy-lieutenants, or the deputy-lieutenants, at every annual general meeting, shall appoint the first meetings of the deputy-lieutenants within the subdivisions, which first meetings shall be as early after the 10th *October* as conveniently may be. *s.* 25. And subdivision meetings then appointed.

And if they judge needful they may appoint a second general meeting. *s.* 25.

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* For the fees payable to such clerk see the 1st and 11th sections of *the annual act* for defraying the expenses of the pay and clothing of the militia.

Issuing precepts to return lists.

And they shall issue orders (I) to the chief constables, and where there is no chief constable, to some other officer of the hundreds, or other divisions within their counties, requiring such constable to issue an order (II) under his hand to all consta-

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(I) The form of a precept to the chief constable to issue an order to the petty constables to return lists of persons liable to serve in the militia.

Monmouthshire, to wit. } To *H C*, yeoman, chief constable of ———, within the said county.

*We* A B, C D, *and* E F, *esqrs. three of his majesty's deputy lieutenants for the said county of Monmouth, at our general meeting for that purpose assembled, do hereby, in pursuance of the statute in that behalf made, require you the said chief constable to issue an order under your hand to all constables, tythingmen, headboroughs, or other officers, of every parish, tything or place within your division, according to the form hereon indorsed* [or *hereunto annexed,* if it is so]. *Given under our hands and seals the* ——— *day of* ——— *in the year* ———

(II) The form of the chief constable's order in pursuance of the above.

Monmouthshire, to wit. } To the constable of ———

*By virtue of a precept from* A B, C D, *and* E F, *esqrs. three of his majesty's deputy-lieutenants in and for the said county, at their general meeting for that purpose assembled, unto me directed, I do hereby require and order you to make out a fair and true list in writing of the names of all the men usually, and at this time dwelling, within your constablewick, between the ages of eighteen and forty-five years, distinguishing thereon their respective ranks and occupations, and where the true name of such persons cannot be procured, the common appellation of such persons, and distinguishing which of the said persons labour under any infirmity likely to incapacitate them from serving as militia-men; and also which of them, if any, is a peer of this realm, or a person serving as a commissioned officer in any regiment, troop, or company in his majesty's other forces, or in any one of his majesty's castles or forts, or a non-commissioned officer or private man, serving in any of his majesty's other forces: or a commissioned officer serving or who has served for four years, in the militia, or a member of either of the universities, clergyman, licensed teacher of any separate congregation, constable, or other peace officer, articled clerk, apprentice, seaman, or seafaring-man, or a person mus-*

bles, tythingmen, headboroughs, or other officers of every parish, tything, or place, within their respective divisions, to return to the deputy-lieutenants within their subdivisions, at the places and on the days, appointed at the first general meeting in every year, lists in writing of the names of all men dwelling within their parishes, between eighteen and forty-five years. *s.* 25.

The constables, tythingmen, headboroughs, and other officers required to return lists of persons fit to serve in the militia, shall within fourteen days after such returns shall be required, give notice in writing*, to or for every occupier of every dwelling-house at his dwelling-house, or where such dwelling-house shall be divided into different stories or apartments, and occupied distinctly by several persons, then to or for the occupier of each distinct story or apartment, to produce within fourteen days † next ensuing, a list in writing, to the best of his belief, of the christian and surname of each man resident in such dwelling-house, or distinct story or apartment between eighteen and forty-five, Constables to give notice to inhabitants to return lists.

* See the form of this notice schedule A. in the next page.

† Reduced to within two days, by 46 *Geo.3.c.3.s.26*, and schedule A.

*tered, trained, and doing duty or employed in any of his majesty's docks or dock-yards, for the service thereof, or employed and mustered in his majesty's service in the* Tower *of* London, Woolwich Warren, *the several gun-wharfs at* Portsmouth, *or at the several powder mills, powder magazines, or other storehouses belonging to his majesty, under the direction of the board of ordnance; or a person free of the company of watermen of the river* Thames, *or a poor man who has more than one child born in wedlock; which list so fairly and truly made as aforesaid, you are hereby required to return upon oath to the deputy-lieutenants and justices of peace for the said county, at their meeting for that purpose to be held on the ——— day of ——— next ensuing the date hereof, at ——— in the said county; having first annexed a true copy of the said list, so to be made out as aforesaid, on the door of the church or chapel belonging to your parish, tything, or place (or if such place shall have no church or chapel belonging thereto, then on the door of the church or chapel of some parish or place thereto adjoining) on some* Sunday *morning before you shall make such returns, which* Sunday *shall be three days at the least before the said ——— day of ———; and you are also to annex notice in writing, at the bottom of the said list, of the day and place of the said meeting, and that all persons, who shall think themselves aggrieved may then appeal; and that no appeal will be afterwards received. Herein fail you not. Given under my hand the ——— day of ——— in the year of our Lord———*

H C, *high constable of the said*——

A. *The form of this Notice.* 46 Geo. 3. c. Sched. A.

To —— ——

Take notice, That you are hereby required, within two days from the date hereof, to prepare and produce a list in writing, to the best of your belief, of the Christian name and surname of each and every man resident in your dwelling-house, between the ages of eighteen and forty-five, distinguishing in such list the several particulars mentioned in the columns thereof; and you are to sign such list with your own name, and to deliver or cause the same to be delivered to me.

Dated the day of

*A. B.* Constable.

| Names. | Description. | Age. | Whether any child, and if any, whether any under 14. | Exempt or not exempt from Militia. | Grounds of Exemption. | Effective, Volunteer or Yeoman. | Licensed teacher, not carrying on trade, or medical practitioner actually practising. |
|---|---|---|---|---|---|---|---|
| A. B. | Housekeeper | 40 | Children under 14 | Exempt | Clergyman | — | — |
| C. D. | Servant | 28 | | Not | — | — | — |
| E. F | Lodger | 24 | None | Not | — | Volunteer | — |
| G. H. | Inmate | 30 | | Not | — | Yeomanry Corps | — |

N. B. If any house is divided into distinct stories, or apartments occupied distinctly, each distinct occupier is required to make this return.

Neglect of compliance with this notice will subject the party to a penalty of ten pounds.

Take notice, that the —— day of —— at the hour of —— in the —— noon, is appointed for hearing appeals within this subdivision, by persons claiming to be exempt from serving in the militia.

*A. B.* Constable of

distinguishing every person claiming to be exempt from serving, together with the ground of such claim; and such notice shall mention the day, time, and place appointed for hearing appeals by persons claiming to be exempt; and such occupier shall after such notice so given or left, make out such list, and sign the same with his own name, and shall deliver the same to such constable, or officer; and if any occupier shall neglect or refuse to make out, sign, and deliver the same within the time before limited, or shall omit any person, or knowingly make any false return, such occupier shall forfeit not exceeding 5*l.* *s.* 26.

Penalty on persons not delivering lists.

In every case where any notice shall be served upon any occupier being a *quaker*, such occupier shall, within seven days after service, produce to the constable or officer, a certificate under the hands of two housekeepers, being *quakers*, acknowledging such person to be one of their persuasion; and such constables or officers are to make returns of the persons liable to serve in the militia, resident in the houses, stories, or apartments of such occupiers so certified to be *quakers* in the same manner as where returns are not made to such notices. *s.* 27.

Quakers to produce certificates of being such.

The constables, tythingmen, headboroughs, or other officers of every parish, shall, within one month after having delivered such notices, make out in every year a true list in writing *, of the names of all the men dwelling within their parishes between the ages of eighteen and forty-five years, as well of those who have not made any return, or been returned in pursuance of such notices, as of those who shall have made such returns, or been returned in pursuance thereof, distinguishing their ranks and occupations, and those who have made returns from those who have neglected to make such returns (and where the true names cannot be procured, the common appellation of such person shall be sufficient), and distinguishing which of the persons returned labour under any infirmity to incapacitate them from serving, and which of them claim to be exempt from serving, and on what account, and shall affix a true copy of such list on the door of the church or chapel, or if any place shall have no church or chapel, on the door of the church or chapel of some parish thereto adjoining, some one *Sunday* morning before they shall make the return to the deputy-lieutenants, which *Sunday* shall be three days before the meeting of the deputy-lieutenants at which such return is to be made, and also notice in writing at the bottom, of the day, and hour, and place of meeting for hearing appeals; and that all persons who shall think themselves aggrieved may then appeal, and that no appeal will be afterwards received; and shall afterwards make a return of such list, or a true copy thereof, to the deputy-lieutenants of the subdivision. *s.* 28.

Constables to make out yearly lists.

* See schedule (B) in the following page.

*Return to be made by the Constable to the clerk of the subdivision meeting.* 46 Geo. 3. s. 28. Sched. B.

| Names. | Description. | Age. | If any Child, and if any whether any under 14. | Exempt or not exempt from Militia. | Grounds of Exemption. | Effective, Volunteer or Yeoman. | Licensed teacher, not carrying on trade, or medical practitioner actually practising. |
|---|---|---|---|---|---|---|---|
| A. B. | Housekeeper | 40 | Child under 14. | Exempt. | Officer of Marines | — | — |
| C. D. | Servant | 28 | None | Exempt. | — | Effective volunteer | — |
| E. F. | Lodger | 24 | 3Children not under 14 | Exempt. | — | — | Practising Apothecary |
| G. H. | Inmate | 19 | None, | Exempt. | Apprentice | — | — |
| I. K. | Housekeeper | 41 | — | — | — | — | — |
| L. M. | Housekeeper | 34 | — | — | — | — | — |

If any person whose name shall be inserted shall think himself aggrieved thereby, or by the omission of any other name, or shall claim to be exempted from serving, such person is to appeal to the subdivision meeting appointed to be held for hearing such appeals; and two deputy-lieutenants are to hear and determine all such appeals, and if the same cannot be heard on the day first appointed, to adjourn to any other day; and the determination of two deputy-lieutenants, if only two are assembled, or of the major part of them, if more than two are assembled, shall be final and no appeal shall be afterwards allowed, or any exemption claimed or admitted. *s.* 29. Appealing from such lists.

But no peer of this realm, nor any commissioned officer in his majesty's other forces, or in any one of his majesty's castles or forts, nor any officer on the half-pay of the navy, army, or marines, nor any non-commissioned officer or private man, serving in any of his majesty's other forces, nor any commissioned officer serving, or who has served four years in the militia, nor any resident member of either of the universities, nor any clergyman, nor licensed teacher * of any separate congregation; whose place of meeting shall have been duly registered within 12 months previous to the general meeting appointed to meet in October. 42 *Geo.* 2. *c.* 10.] nor any constable or peace-officer, nor any articled clerk †, ap- Persons excused.

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* For persons falling within the description of *licensed teachers* see title DISSENTERS, in vol. i.

† In *Gerrard's* case, *Hil.* 17 *Geo.* 3, in the common pleas, he being an *attorney* and one of the secondaries of that court, and balloted to serve in the west regiment of the *Middlesex* militia; the question was, whether he was liable to serve or not; and in support of the negative it was contended, that articled clerks being exempted by name, much more ought the attornies themselves to be exempted; for it was to no purpose to exempt the clerks, if the master was to be liable to be taken: in answer to which it was urged, that the privilege of the court extends only to exempt its officers from *personal* duties; that this is not a personal duty, but a *pecuniary* one, for if the party doth not choose to serve, he may pay 10*l*.—And by The Court, the true distinction is, whether this is a *personal* or a *pecuniary* duty. It is beyond a doubt, that privilege extends to all cases of personal service, though imposed by acts of parliament, and in the most comprehensive words, unless they clearly express the sense of the legislature to the contrary: as in the cases of constables and tythingmen, officers under commissioners of sewers, overseers of the poor, collectors of subsidies, watch and ward. The only question therefore is, whether this be a *personal* service; and we are all of opinion, that it is not a *personal* but only a *pecuniary* service, because it may, at the option of the party balloted, be commuted for a certain sum of money, namely 10*l*. which sum is to be laid out in providing a substitute for the defaulter, who by payment of the said money stands totally discharged for [*five*] years He has therefore three options allowed him; to serve personally, to find a substitute, or to pay 10*l*. This is the whole of his charge; for al-

prentice, seaman, or seafaring-man, nor any person employed in his majesty's docks or dock-yards, or in his service in the *Tower* of *London*, *Woolwich Warren*, the gun-wharfs at *Portsmouth*, or at the powder-mills, magazines, or other storehouses under the ordnance; nor any person free of the company of watermen of the river *Thames*, nor any poor man who has more than one child born in wedlock, (nor any person serving or having found a substitute to serve in the army of reserve. 43 *Geo.* 3. *c.* 123, nor any effective volunteer. 44 *Geo.* 3. *c.* 54. *s.* 78), shall be liable to serve personally, or provide a substitute. 42 *Geo.* 3. *c.* 90. *s.* 43.

Fraudulent apprenticeship

And if two deputy-lieutenants shall at any of their subdivision meetings receive information, or shall suspect, that any person inserted in any list, and described as an apprentice, has been fraudulently bound to avoid serving in the militia, it shall be lawful for them to make inquiry thereof, and to summon and examine persons on oath; and in case it shall appear that such binding was fraudulent, such deputy lieutenants may appoint such person to serve, if there shall be a vacancy; and if not, then upon the first vacancy that shall happen; and the person to whom such apprentice shall have been bound shall forfeit 10*l.* *s.* 49.

Penalty on persons not appealing in time.

And on the making out or amending of any lists of persons liable to serve, every person who shall wilfully neglect to appeal at the time appointed for that purpose, shall forfeit for every offence not exceeding 20*s.* nor less than 5*s.* on the discretion of two deputy-lieutenants, or justices of the peace, and on nonpayment thereof be imprisoned at their discretion for any time not exceeding one week. 43 *Geo.* 3. *c.* 50. *s.* 15.

Constables neglecting their duty.

And if any chief constable of any hundred, or any constable or the officer of any parish or place, within such subdivisions, shall refuse or neglect to return such list as before directed, or to comply with such orders as he shall receive from the deputy lieutenants, in pursuance of this act; or shall in making such return be guilty of any fraud or wilful partiality, or gross neglect, the deputy-lieutenant, or two of them, may commit the person so offending to the common gaol for one month, or at their discretion may fine him in any sum not exceeding 20*l.* nor under 40*s.* *s.* 32.

Endeavouring to procure false returns.

And if any person who shall by gratuity, gift, or reward, or by promise thereof, or by any indemnification, or by menaces, or otherwise, endeavour to prevail on any constable or other

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though in times of distress and necessity the current price of a substitute should be 50*l.* the person balloted may be excused for 10*l.* It is therefore not a penalty for the neglect of finding a substitute, for it may be less than the expense of hiring one: but it is clearly a commutation. Of course the court were unanimous that the privilege of an attorney does not prevail in this case. 2 *Black. Rep.* 1123.

officer to make a false return, or to erase or leave out the name of any person who ought to be returned, he shall forfeit 50*l.* *s.* 31.

And if any person shall refuse to tell his christian and surname, or shall falsely tell a christian or surname, pretending the same to be true, or shall refuse to tell the christian or surname of any man lodging within his house, or shall knowingly tell any false name, pretending it to be true, to any constable or other officer, such person shall forfeit 10*l.* *s.* 31. Persons refusing to tell their names.

And if the list of any parish, tything, or place shall be lost or destroyed, the said deputy lieutenants, or two of them, may cause a new list to be made, and returned to them at their next subdivision meeting, in like manner as the former was. *s.* 46. Lists lost.

### IV. *Subdivision meetings in general.*

The deputy lieutenants within their subdivisions shall appoint a clerk, for their subdivisions *, and displace such clerk and appoint another. 42 *Geo.* 3. *c.* 90. *s.* 18.

The clerks of the subdivision meetings shall, after such subdivision meeting shall have been appointed, give notice in writing of the time and place of meeting to the deputy lieutenants resident within such subdivision, and also to the commanding officer of the regiment, if on actual service, or (if not) to the colonel, or (in his absence from *Great Britain*) to the next commanding officer within *Great Britain*, and an account of the days fixed for receiving lists—and balloting—and inrolling the militia men within such subdivision. 42 *Geo.* 3. *c.* 90. *s.* 23.

And the meetings of the deputy lieutenants within the subdivisions shall consist of two deputy lieutenants: and where two deputy lieutenants do not attend, one, together with one justice, may do all acts, matters, and things, by this act directed to be done by deputy lieutenants at subdivision meetings; and all such acts so done, shall be valid. 42 *Geo.* 3. *c.* 90. *s.* 22.

And if there shall not appear at any subdivision meeting two deputy lieutenants, or one and one justice, the clerk shall, by notice to be given in writing to all the deputy lieutenants within such sub-division, appoint another meeting within fourteen days at the same place, such notice being given five days previous thereto. *s.* 24.

And the deputy lieutenants within any subdivision, or two

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* For the fees payable to such clerk, see the 1st and 11th sections of the *annual act* for defraying the expenses of the pay and clothing of the militia, under Head XVIII.

Deputy lieutenants may require constables to attend them.

of them, may issue their order, under their hands and seals, requiring the attendance of any constable, tythingman, headborough, or other officer; and if he refuse or neglect to appear according to such warrant, the said deputy lieutenants or two of them, are to commit the person so offending to the common gaol for one month, or to fine such person not exceeding 20*l*. nor less than 40*s*. *s*. 32.

Clerks of subdivision to send rolls of proceedings to clerk of general meeting.

Also the clerks of all subdivision meetings shall, within fourteen days after every subdivision meeting, transmit to the clerk of the general meeting copies of such rolls as shall be signed at such meeting. *s*. 36.

And if such clerk shall omit or neglect to make such return, or shall wilfully make any false return, he shall forfeit 20*l*. *s*. 36.

### *V. First subdivision meeting, for receiving of lists, and settling thereof.*

On the days, and at the places appointed for the returns of lists, the constables, tythingmen, headboroughs, or other officers shall attend and verify the returns upon oath. 42 *Geo*. 3. *c*. 90. *s*. 30.

And the deputy lieutenants, or two of them in their subdivisions, shall (after hearing appeals or claims of exemption,) direct such lists to be amended, and shall also direct the names of all persons excepted from serving to be struck out, and the names of any persons omitted to be inserted. *s*. 30.

And after amending the said lists, they shall appoint the times and places for their second meetings, within their subdivisions. *s*. 30.

And shall return to the clerk of the general meetings, for the use of the general meetings, certificates * under their hands of the number of men in each parish, between 18 and 45, distinguishing the number liable to serve, and also the number exempt from serving, and the same shall be filed by the clerk for the use of the general meetings. *s*. 30.

But the general meeting may alter the appointed subdivisions, if they see occasion. *s*. 40.

And may also alter the established allotment of the number of men in each hundred, rape, lath, wapentake, or other division, to serve in the militia, towards raising the number directed to be raised, according to the numbers contained in the certificates last received from the subdivision meetings. *s*. 40.

Clerks to the general meetings to make to

The clerks to the general meetings shall transmit to the privy council annually, after the returns of men shall have been made

* See schedule (C) in the next page.

(C) *Return to be made by Clerk of subdivision Meeting to Clerk of general Meeting.* 46 Geo. III. c. s. 2. Sched. C.

| PARISH. | Descriptions of persons liable to serve. | | | | Total liable to serve. | Persons exempted from serving. | | | | Total exempt. |
|---|---|---|---|---|---|---|---|---|---|---|
| | Having no Children. | | Having Children. | | | | | | | |
| | Under 30. | Above 30. | No Child under 14. | Any Child under 14. | | Yeomanry and Volunteers. | Army, Marines, Sea Fencibles. | Clergy, Licensed Teachers, Medical Men, and Constables. | Infirm. | |
| A. | 130 | 150 | 120 | 135 | 535 | 82 | 10 | 4 | 8 | 101 |
| B. | 210 | 200 | 214 | 225 | 849 | 100 | 20 | 10 | 12 | 142 |
| C. | | | | | | | | | | |
| General Totals. | | | | | | | | | | |

*A. B.* Clerk of the subdivision.

the privy council returns of the number of men serving.

to the general meetings, accurate returns * of the number of persons between 18 and 45, distinguishing the number fit to serve and also the number therein exempt from serving, and if such clerk shall omit or neglect to make such return within one month after the general meeting at which the returns shall have been made, or shall wilfully make any false return, such clerk shall forfeit 100*l.* *s.* 37.

### *VI. Second subdivision meeting for proportioning the number to serve for each parish.*

The deputy lieutenants at their second meeting, within any subdivision, shall appoint what number shall serve for each parish, tything, or place, within such subdivision, in proportion to the number last appointed, at a general meeting, to serve for each hundred. 42 *Geo.* 3. *c.* 90. *s.* 41.

And shall appoint another meeting to be holden, within three weeks, within the same subdivision. *s.* 41.

Lists of two or more parishes may be joined.

And they may at their subdivision meetings add together whenever they shall think it necessary, any two or more parishes or tythings, or any particular place or places, to any parish or parishes, tything or tythings adjoining thereto, for the purposes of this act; and may also add together the lists of such parishes and places, so as to make the choice of militia men by ballot within every such subdivision as equal and impartial as possible. *s.* 34.

And where any parishes and places so added together shall lie in different hundreds, such deputy lieutenants shall direct in which of them the same shall be considered; and shall proceed upon such lists so added together, in like manner as if they had been originally returned for one parish, or for the parish to which any extra-parochial place shall have been added. *s.* 34.

And the constables, or other officers of such places so added together, shall act together in the execution of this act; and shall hold their meetings in the parish or tything which shall be named first in such order of deputy lieutenants.

Deputy lieutenants to determine disagreements between parish officers.

And if any difference shall arise between the officers of any parish, or place, or between the officers of different parishes or tythings, the deputy lieutenants shall at any subdivision meeting hear and determine the same, and make such order therein as to them shall seem meet; and such orders shall be final and conclusive. *s.* 34.

Extra parochial places.

The several clauses, regulations, and forfeitures in this act contained, shall extend to every extra-parochial place added to any parish or tithing, as fully as if they had severally been expressedly applied to extra-parochial places; and where there

* See schedule (D) in the next page.

*Return to be made by Clerk of general Meetings to the Privy Council.* 46 Geo. 3. Sched. D.

| Subdivision. | Descriptions of persons liable to serve. | | | | Totals liable to serve. | Persons exempt from serving. | | | | Total exempt. |
|---|---|---|---|---|---|---|---|---|---|---|
| | Having no Children. | | Having Children. | | | | | | | |
| | Under 30. | Above 30 | No Child under 14. | Any Child under 14. | | Yeomanry and Volunteers. | Army, Marines, Sea Fencibles. | Clergy, licensed Teachers, medical Men, and Constables. | Infirm. | |
| A. | 500 | 340 | 420 | 400 | 1,660 | 300 | 50 | 20 | | |
| B. | | | | | | | | | | |
| C. | | | | | | | | | | |
| General Totals. | | | | | | | | | | |

shall be any extra-parochial place or other place, wherein no constables, tythingmen, headboroughs, or overseers of the poor have been or are appointed, or act, the respective constables, &c. of the parishes or tithings respectively, to which such extra parochial or other place shall have been added, shall act as such for such parochial or other place in the execution of this act. s. 35.

Rates to be distinctly made for this act.

But if any rates shall be to be made for any such parishes and extra parochial places jointly, such rate shall be distinctly made for the purpose of this act. Also, every such separate rate shall be raised in the same manner as the poor rates. s. 35.

And shall issue out an order (III) to the chief constables, or other officers of the hundreds, requiring them to give notice to

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(III) The form of the precept to the chief constable, to issue notice to the petty constables, of the number of men appointed to serve in each parish, and of the time and place of balloting.

Monmouthshire } TO *H B*, chief constable of the hundred of
to wit. } ——— , within the said county.

*We* A B, *and* C D, *esqrs. deputy lieutenants* [or if only one deputy lieutenant attends, *We* A B, *esq. a deputy lieutenant*, *and* J P, *esq. one of his majesty's justices of the peace*] *in and for the said county of* ———, *at our subdivision meeting assembled for the purpose of appointing the number of men to serve in the militia for each parish, tything, or place, within the said hundred, do hereby order you the said chief constable, to give notice to the constable, tythingman, headborough, or other officers of every parish, tything, or place, within your hundred, that the number of men appointed by us to serve in the militia for such parish, tything, or place, is as follows: that is to say, for the parish of* ——— , ——— *men, for the tything of* ———, ——— *men, and for the township of* ———, ——— *men; and that our next subdivision meeting for causing the said men to be chosen by ballot to serve in the said militia, will be held at* ——— *in* ———, *in the said county, on* ——— *the* ——— *day of* ——— *now next ensuing, at the hour of* ——— *in the* ——— *noon of the same day. Given under our hands and seals the* ——— *day of* ——— *in the year* ———

The form of the notice from the chief constable to the petty constables, of the number of men appointed to serve in their respective parishes.

Monmouthshire, } To the constable of ———
Hundred of —. }

*In pursuance of an order from* A B, *and* C D, *esqrs, deputy lieutenants*, [or *from* A B, *esq. a deputy lieutenant, and* C D,

the constable or other officer of every parish, tything or place, within their hundreds or divisions, of the number of men appointed to serve for such parish, tything or place, and of the time and place of the next subdivision meeting. *s.* 41.

*VII. Third subdivision meeting for ballotting.*

And the deputy lieutenants, or two of them, assembled in pursuance of such appointment at the second meeting as aforesaid, shall cause the number appointed to serve to be chosen by ballot out of the list returned for every parish. 42 *Geo.* 3. *c.* 90. *s.* 41.

And they shall appoint another meeting to be holden within three weeks in the same subdivision. *s.* 24.

And shall issue out an order (IV) to the chief constables of

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*esq. one of his majesty's justices of the peace*] *in and for the said county to me directed, I do hereby give you notice, that* —— *men are appointed to serve in the militia of the said county of* M, *for the said parish of* ——. [Or if the lists of two or more parishes are joined together *, then say *that* —— *men are appointed to serve in the militia of the said county of* M, *jointly for your said parish of* —— and for the parish of —— *in the said hundred.*]

*And that the next subdivision meeting for causing such number of men to be chosen by ballot, to serve in the said militia, will be held at* ——, *in* ——, *in the said county, on* —— *the* —— *day of* —— *now next ensuing, at the hour of* —— *in the* —— *noon of the same day. Given under my hand the* —— *day of* —— *in the year of our Lord* ——.

It will be proper for the petty constable, on the receipt of the above notice, to publish the same, by affixing it on the door of the church or chapel, or otherwise notifying it as hath been usual in other parish matters.

(IV) The form of a precept to the chief constable to issue an order to the petty constables to give notice, to the persons chosen by ballot, to appear, and be sworn and inrolled.

Monmouthshire. } To *H C*, yeoman, chief constable of the hundred of ——

*We* A B *and* C D, *esqrs, deputy lieutenants,* [or *We* A B, *esq. a deputy lieutenant, and* C D, *esq. one of his majesty's*

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* See sec. 34. in p. 356, supra.

the hundreds or other divisions to direct the constable of every

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*justices of the peace*] *in and for the said county of* ——, *at our subdivision meeting for that purpose assembled, do hereby order and require you the said chief constable, forthwith to direct the several constables, tythingmen, headboroughs, or other officers of the respective parishes, tythings, or places within your hundred, to give notice to the several persons whose respective names are hereunder written, inhabitants of the said several parishes, tythings, or places within your said hundred, chosen by ballot at our subdivision meeting to serve in the militia of the said county, that they do severally and respectively appear at* —— *in* —— *in the said county, on* —— *the* —— *day of* —— *now next ensuing, then and there severally to take the oath in that behalf required, and to be severally inrolled to serve in the said militia of the said county, as private militia men, for the space of five years, or otherwise to provide fit persons, to be approved by the deputy lieutenants and justices of the peace that shall be then and there present, to serve as their several substitutes, and respectively take the said oath, and be inrolled in manner aforesaid.* Given under our hands and seals the —— day of ——, in the year of our Lord ——.

Form of the list of persons chosen to serve, to be wrote under the above precept, or indorsed thereon.

Persons chosen by ballot to serve in the militia of the county of *M*, for the several parishes, tythings, or places within the hundred of —— in the said county.

| Parishes. | Persons' names. |
|---|---|
| For the parish of *A*. - | *C C* of —— street, tyler. |
| - - - - - - | *D D* of —— street, mason. |
| For the tything of *B*. - | *J J* of —— street, gent. |
| - - - - - - | *R K* of —— street, esq. |

The form of the chief constable's order to the petty constables, to give notice to the persons chosen by ballot to serve in the militia, in pursuance of the foregoing precept.

Monmouthshire,<br>Hundred of . . . . } To the constable of ——

*In pursuance of an order from* A B *and* C D, *esqrs, deputy lieutenants* [or from A B, *esq. a deputy lieutenant, and* C D, *one of his majesty's justices of the peace*] *in and for the said county, to me directed, I do hereby direct and require you the said constable, to give notice to the several and respective persons whose names are hereunder written, inhabitants within your constable-*

parish, to give notice (V) to every man chosen to serve, to appear at such meeting, which notice shall be given or left at his place of abode, seven days before such meeting. *s.* 41.

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*wick, and chosen by ballot to serve in the militia of the said county, that they do severally and respectively appear at —, in — in the said county, on — the — day of — next, then and there severally to take the oath in that behalf required, and to be severally inrolled to serve in the said militia, for the said county, as private militia men for the space of five years, or otherwise respectively to provide fit persons, to be approved by the deputy lieutenants, and justices of peace that shall be then and there present, to serve as their several substitutes, and respectively take the said oath, and be inrolled in manner aforesaid; which said notice you are to give unto the said several and respective persons, or leave at their several and respective places of abode, at least seven days before the said — day of — next, and be you then and there present to certify upon oath what you shall have done in the premises.* Herein fail not, *under the pain that will therein ensue. Given under my hand the — day of —, in the year of our Lord —*

*H C*, chief constable of the hundred of —.

Persons referred to in the above precept.

*A B* of —, mason.
*C D* of —, gent. &c. &c.

(V) Form of the notice from the petty constable to the persons mentioned in the last precept, as chosen to serve.

A B,

*Take notice that you are chosen by ballot to serve in the militia of the county of* M, *and that you are personally to appear at — in the said county on — the — day of — next, before the deputy lieutenants and justices of the peace for the said county to be then and there assembled, to take the oath in that behalf required, and to be inrolled to serve in the militia of the said county as a private militia man, for the space of five years, or otherwise to provide a fit person to be then and there approved by the said deputy lieutenants and justices, who shall take the said oath, and be then and there inrolled as aforesaid. Given under my hand the — day of — in the year of our Lord —*

C C.

To *A B* of — mason,

### VIII. *Fourth subdivision meeting for swearing and inrolling.*

The said constable, tythingman, headborough, or other officer, shall attend such meeting, and make a return upon oath of the days when such notice was served:

Swearing

And every person chosen by ballot shall, upon such notice, appear at such meeting, and if on examination found fit for service and approved of, as hereinafter directed, shall take the following oath:

Oath.

*I A B do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king* GEORGE; *and that I will faithfully serve in the militia, within* Great Britain, *for the defence of the same, during the time of five years, for which I am inrolled, unless I shall be sooner discharged.*

Inrolling.

And such person shall be inrolled (in a roll) to serve in the militia as a private militia man for five years:

Providing substitutes.

Provided, that if any person so chosen shall produce for his substitute a man *of the same county, or of some adjoining parish whether in the same county or not*, fit for service, who shall have not more than one child born in wedlock,* and who shall be examined and approved as hereinafter mentioned, such substitute shall be inrolled to serve for five years, and also for such further time as the militia shall remain embodied, if, within the space of five years, his majesty shall order the militia to be drawn out and embodied; and such substitute shall take the following oath:

Substitute's oath.

*I A B do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king* GEORGE; *and that I will faithfully serve in the militia, within* Great Britain, *for the defence of the same, during the time of five years, or for such further time as the militia shall remain embodied, if, within the space of five years, his majesty shall order and direct the militia to be drawn out and embodied, unless I shall be sooner discharged.*

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* This is merely directory to the deputy lieutenants, who ought to make every inquiry before they approve of a substitute as to the number of his children, to see whether he is qualified according to this clause or not, but if they do take him, though he may have more than one child, he becomes to all intents and purposes a legal substitute, and is entitled as such to all the privileges and benefits granted by the militia acts. *Rex v. Willis. Hil. Ter. 35 Geo. 3. 6 Ter. Rep. 179.*

And any person chosen by ballot, for whom such substitute shall have been produced, approved, inrolled, and sworn shall be exempt from service in the militia, in like manner as if he himself had served. 42 *Geo.* 3. *c.* 90. *s.* 41.

Persons serving by themselves or substitute not to serve again till it comes to their turn.

Also no person having served personally or by a substitute, shall serve again, until by rotation it shall come to his turn. *s.* 43.

But no person who has served only as a substitute shall be exempted from serving again if chosen by ballot. *s.* 43.

One deputy lieutenant may administer oaths.

And one deputy lieutenant may administer the oath to any person balloted, or to any person offering himself as a volunteer under this act, or to any substitute; and such deputy lieutenant is to direct the clerk of the subdivision to inroll the name of every such person, together with the day on which the oath was administered, in the roll of such subdivision. *s.* 41.

Previous to inrolment to be examined by a surgeon.

No man shall be approved or inrolled to serve in the militia, either as a balloted man, or as a substitute or volunteer, until he shall have been carefully examined by some surgeon, and shall have been reported by such surgeon to be neither ruptured, lame, maimed, nor afflicted with any disorder that may render him unfit to serve, but to be in every respect fit for service: and the deputy lieutenants at their subdivision meetings shall, before they proceed to inrol any man, cause such examination to be carefully made; and the said deputy lieutenants are to require the attendance of any surgeon of any regiment, battalion, or corps of the militia, if such surgeon can be had, or otherwise to require the attendance of any other competent surgeon for that purpose, and not exceeding 10*s.* shall be paid to the surgeon for every day he shall attend, and shall be paid to him in like manner as allowances to subdivision clerks. *s.* 52.

Fees to surgeons.

And also as to their residence, age and family.

And every ballotted man, substitute and volunteer, shall be examined upon oath (I) before the deputy lieutenants as to his residence, age and family. 43 *Geo.* 3. *c.* 50. *s.* 9.

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(I) Form of his oath.

*I* —— *do make oath that I am by trade a* ——— *and have been usually resident in the parish of* —— *in the county of* ——— *that I am unmarried* [*or have a wife living*, as the case may be] *and that I have no children* [*or only one child born in wedlock*] *and that I have no rupture nor ever was troubled with fits, and am no ways disabled by lameness or otherwise, but have the perfect use of my limbs, that I am not a seaman or seafaring man or an apprentice, and that I do not belong to his majesty's navy, army, or marines, nor to any other corps of militia, as witness my hand at* —— *the* ——— *day of* ——— *one thousand eight hundred and* ———. *Sworn before me at* ——— *this* ——— *day of* ——— *one thousand eight hundred and* ——

Witness present W W. J P.

And if any person whose name shall be drawn by ballot shall refuse when required to be examined as to his fitness to serve, such person may at the discretion of the two or more deputy lieutenants or justices of the peace, or magistrates be imprisoned for not exceeding one week. 43 *Geo.* 3. *c.* 50. *s.* 14.

And he shall notwithstanding such imprisonment be liable to be inrolled to serve in the said militia, if he shall appear to the deputy lieutenants a proper person to be so inrolled. 43 *Geo.* 3. *c.* 100. *s.* 1.

No seaman to be a substitute.

And no seaman or sea-faring man shall be inrolled to serve either as a substitute, or as a volunteer. 43 *Geo.* 3. *c.* 50. *s.* 7.

Deputy lieutenants to class the men inrolled;

The deputy lieutenants in their several subdivisions shall, as soon as they shall have inrolled the number required, divide the men enrolled into classes herein-after mentioned; that is to say, IN THE FIRST CLASS they shall put all the men under thirty years of age, and having no children living; IN THE SECOND CLASS, all the men above thirty years of age, having no children living; and in the THIRD CLASS, all the men not having any children living under the age of fourteen years; and in THE FOURTH CLASS, all the men having any children, one of whom only shall be under the age of fourteen years; and in THE LAST CLASS, all men not included in any of the former descriptions; and shall forthwith make out a list of such classes (E), and within three days after the completing thereof, the clerk of such subdivision meeting shall transmit to the clerk to

and subdivision clerk to trans-

(E) *Form of this return.*

SUBDIVISION of —— in the county of ——
RETURN of enrolment, dated the —— day of ——

| Parishes. | NAMES OF MEN. | | | Date of Enrolment. | Ages | CLASSES. | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Principal. | Substitute. | Volunteers. | | | 1st | 2d | 3d | 4th | Last. |
| Islington. | S. Jones. | — | — | April 21 | 30 | ✕ | | | | |
| C. | T. Smith | E. Jones. | — | 22 | — | — | | | | |
| D. | — | — | T. Gray. | 23 | — | — | — | — | ✕ | |
| — | — | — | — | — | — | | | ✕ | | |
| — | — | — | — | — | | | | | | ✕ |
| Totals serving | | | | | | | | | | |

*Signed* A. B. *clerk to subdivision meeting.*

the general meetings an exact copy of such list, to be by him entered in a book. 42 *Geo.* 3. *c.* 90. *s.* 54.

mit the same to clerk of general meeting.

But it shall be lawful for his majesty by any order given by one of his secretaries of state to direct that the persons returned shall be arranged in any other classes, as to age, marriage, children or other circumstances, and to require returns to be made to constables, and by clerks of general subdivision meetings, according to such classes, and in such other forms as he shall by such order direct. 46 *Geo.* 3.

May order other classes to be returned and in other forms.

And the clerks of the subdivision meetings, shall as soon as the militia-men are inrolled, likewise transmit to the colonel or commandant, or to the commanding officer a list specifying the names, trades, and abode of all such militia-men as are inrolled, and when there are substitutes, the names, trades, and places of abode of the persons in the room of whom such substitutes were inrolled. 42 *Geo.* 3. *c.* 90. *s.* 23.

Lists of inrolled men to be sent to the respective colonels and commandants.

If through the neglect or mistake of any chief constables, constables, or other officers, or from any other cause, the full number of men appointed for any subdivision should not be duly inrolled at the meeting appointed for that purpose, then the deputy lieutenants, or two of them, may cause the lists to be amended, and to proceed to a fresh ballot, and to adjourn, or to appoint other metings, and repeat the amending of the lists as necessary. *s.* 44.

Fresh ballot to be taken if full number be not inrolled.

And when any militia man, after sworn and inrolled, shall become unfit for service, the colonel or commanding officer, with two deputy lieutenants, if the regiment shall then be within the county, or the commanding officer only, if the regiment shall be absent therefrom, may discharge any militia man *; but another man shall not be balloted for, in the room of such militia-man discharged, until such discharge shall be confirmed under the hands of two deputy lieutenants at the subdivision meeting. *s.* 55.

Supplying vacancies occasioned by the discharge of persons unfit.

And when any militia man shall die, or be appointed a serjeant, corporal, or drummer, or be discharged as unfit for service [*or*] in pursuance of the sentence of a court martial by a court martial, the colonel or commanding officer shall certify the vacancy to the clerk of the general meeting, who shall forthwith transmit the certificate to the deputy lieutenants of the subdivision, and such vacancy shall be filled up by a fresh ballot. *s.* 56.

Or by death or promotion.

And whenever any certificate, signed by the colonel or commanding officer of any corps of militia, shall be transmitted to the deputy lieutenants of the subdivision for which any private man shall have been inrolled, of his having died, or been appointed a serjeant, corporal, or drummer, in the militia, or been discharged as unfit for service, or by sentence of a court martial;

* This power to the deputy lieutenants to discharge a person inrolled only extends to the instance of a militia man who is under a personal disability to serve. *Rex* v. *Willis*, *Hil. Ter.* 35 *Geo.* 3. 6 *Ter. Rep.* 184.

such vacancy shall be filled up by ballot, immediately after the receipt of such certificate, except in such cases as are excepted. *s.* 52.

No ballot to be for a private appointed a non-commissioned officer or drummer in the room of one reduced to the ranks.

And whenever any private militia man shall be appointed a non-commissioned officer or drummer in any regiment, battalion, or corps of militia in the room of one reduced to the ranks, no ballot shall take place in the parish or place for which such private man so appointed was then serving, in consequence of any vacancy occasioned by such appointment, until the person so reduced shall have obtained his discharge. *s.* 57.

Where a man is provided in the room of one appointed a serjeant, &c. the quarter sessions may order a sum to be paid out of the county rates.

Where, in any regiment, battalion, or corps of militia, in which any private man shall be appointed a serjeant, corporal, or drummer, in consequence of any vacancy occasioned by the death or discharge of any non-commissioned officer or drummer, the parish or place for which such man was then serving shall find and provide another man in his stead, any two deputy lieutenants acting for the subdivision wherein such parish or place shall be situate, may certify the same to the justices assembled at the next general or quarter sessions; and such justices shall order a sum, not exceeding the average price paid for a substitute or volunteer in such parish or place, or any adjoining parish or place, to be paid out of the county rates to the churchwardens and overseers of the poor of the parish or place, which shall find and provide another man as aforesaid, whether such man shall serve personally or by substitute, and to be applied in aid of the poors rates in such parish or place. *s.* 58.

Deficiencies to be certified by the colonel to the clerk of the general meetings, and by the latter to the subdivision clerks.

And all deficiencies or vacancies shall be certified from time to time by the colonel or other commandant to the clerk of the general meetings, who shall forthwith give notice to the clerks of the subdivision meetings, and the deputy lieutenants shall thereupon within 7 day after such notices assemble in their respective subdivisions, and immediately proceed to the filling up such deficiencies by ballot or otherwise according to the act. 43 *Geo.* 3. *c.* 50. *s.* 2.

Vacancies by persons ordered out not appearing within one month to be filled up.

And it shall be lawful for the deputy lieutenants in their subdivisions in case any person ordered to be drawn out and embodied shall make default by not appearing, or by desertion, or absence from duty, and shall not be taken within one month, to declare a vacancy and forthwith to fill up the same. 43 *Geo.* 3. *c.* 50. *s.* 3.

Ballotting for men whose terms of service will expire before 20th Nov.

And two deputy lieutenants, at their several subdivision meetings, shall ballot for militia men in the room of all militia men actually serving, whose terms will expire before the 20th *Nov.* then next ensuing such subdivisions meetings, and shall at a following meeting inrol the said balloted men, or their substitutes; and the commanding officer of every regiment is to discharge any man whose time will expire before 20th *Nov.* then next ensuing, and to receive any other militia man in his room, who shall have taken the oath, and been

inrolled; and every man so discharged, if serving for himself, shall be entitled to the same immunity from further service as if he had served his full term; and if such man so discharged was serving as a substitute, then the person for whom he served shall be entitled to the like immunity. 42 *Geo.* 3. *c.* 90. *s.* 60.

Penalty on persons balloted not appearing or not finding a substitute.

And if any person chosen by ballot (*not being a quaker*), shall refuse or neglect to appear and take the oath, and serve, or to provide a substitute, such person shall forfeit (VI) 10*l.* * and at the expiration of five years be again liable to serve or provide a substitute; and in default of payment, or for want of effects whereon to levy the same, the name of such person shall be entered on the roll, and such person shall be delivered over to some proper officer of the regiment, for which he was ballotted, and shall be compelled to serve, and shall be

* But persons chosen by ballot *subsequent to his majesty's proclamation for inrolling the supplementary militia* (not being quakers) not having or providing a substitute shall forfeit 15*l.* 43 *Geo.* 3. *c.* 50. *s.* 10.

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(VI) Form of an information against a person chosen by ballot to serve in the militia for not appearing to be sworn and enrolled.

Monmouthshire to wit. } *BE it remembered, that this* —— —— *day of* ———, *in the year of our Lord* ———, J J *of* ———, *gentleman, cometh before me* J P, *esq. one of his majesty's justices of the peace in and for the said county, and maketh information and complaint upon oath, that* O O, *late of* ———, *in the said county, yeoman (not being one of the people called quakers), hath been duly chosen by ballot to serve as a private militia man in the militia of the said county, and hath had due notice to appear before the deputy lieutenants in and for the said county, at their subdivision meeting, for that purpose assembled, to take the oath in that behalf required, and to be inrolled to serve in the said militia as a private militia man, or otherwise to provide an able and fit person to serve as his substitute, according to the statute in that behalf made and provided; but that he the said* O O *hath refused* [or *neglected*, as the case is] *to appear and take the said oath, and serve in the militia, and hath also neglected to provide an able and fit person to serve as his substitute, contrary to the form of the said statute: whereupon the said* J J *prays judgment of me the said justice; and that the said* O O *may be summoned to answer the matters charged upon him in and by the said information.*

J J.

Taken before me the day and year above-mentioned. J P. }

subject to the same punishments, for afterwards deserting, as in case he had appeared, and been duly sworn and inrolled. *s.* 45.

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### Summons on the foregoing information.

Monmouth-shire. } To the constable of ———

*Whereas information and complaint hath been made upon oath before me* J P, *esq. one of his majesty's justices of the peace in and for the said county of* ——, *that* O O, *&c.* [State the offence as in the information, as far as and including the words *contrary to the form of the said statute*] *these are therefore to require you forthwith on the sight hereof, to summon the said* O O *personally to be and appear before me the said justice at* ——, *in the town of* —— *in the said county, on* —— *the* —— *day of* —— *next, at the hour of* —— *in the* ——*noon of the same day, to answer the matters charged upon him in and by the said complaint and information. Given under my hand and seal at* —— *the* —— *day of* —— *in the year of our Lord* ——.

The conviction may be drawn up agreeable to the general form under the title CONVICTION.

### Form of warrant to distrain for the forfeiture.

Monmouth-shire. } To the constable of ———

*Whereas* O O *of* ——, *in the said county of* ——— *yeoman, is this day duly convicted before me* J P, *esq. one of his majesty's justices of the peace in and for the said county, for that he the said* O O *(not being one of the people called quakers), &c.* [Here set forth the offence as before] *contrary to the form of the said statute, by reason whereof the said* O O *hath forfeited the sum of* 10*l. to be applied as the said statute doth direct. These are therefore in his majesty's name to command you to levy the said sum of* —— *by distress of the goods and chattels of him the said* O O; *and if within the space of* ——— *days next after such distress by you taken, the said sum of* ——, *together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained; and out of the money arising by such sale, that you do pay the said sum of* 10*l. (which is to be applied by the said deputy lieutenant in providing of a substitute to serve for him the said* O O; *and for the other purposes in the said statute directed) unto* C S *of* ———, *gent. the clerk of the subdivision meeting, who hath been*

And such penalty shall be applied by two deputy lieutenants in providing a substitute for the persons who have paid the same, who shall be examined, approved, sworn in, and inrolled in like manner as other substitutes; and if any surplus shall remain the same shall be paid to the colonels or other commanders to be applied as part of their regimental stock. *s.* 65. Application of such penalty.

And the return of the amount of such penalties with the names of the persons paying the same, shall be transmitted by the clerks of the subdivision meetings to the clerks of the general meetings. *s.* 66.

And if any quaker shall be chosen to serve, and shall refuse or neglect to appear, and to take the oath and serve, or to provide a substitute, then two deputy lieutenants shall, if they think proper, upon as reasonable terms as may be, hire a fit person as a substitute for such quaker, and such substitute shall take the oath, and subscribe his consent to serve; and two deputy lieutenants may by warrant (VII) under their hands How quakers are compellable to find men.

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*by the said deputy lieutenants appointed to receive the same; returning the overplus, if any, on demand unto him the said* O O, *the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said* O O, *whereon to levy the said sum of* ——, *then you are to certify the same to me, together with the return of this warrant. Given under my hand and seal, the* —— *day of* ——.

The constable's return of "No Effects" to be indorsed on the above warrant.

*I* A C, *constable of the parish of* ——, *in the county of* ——, *do hereby certify and make oath, that by virtue of the within warrant, I have made diligent search for the goods of the within-named* O O, *and that I cannot find any sufficient goods of him the said* O O *within my constablewick, whereon the within sum of* 10*l. may be levied as is within commanded. Witness my hand the* —— *day of* ——

A C.

Sworn before me the day and year above-mentioned. J P.

(VII) Form of the warrant to distrain for quakers substitutes.

Monmouthshire, to wit. } To the constable of ——

*Whereas* O O, *late of* —— *aforesaid, in the said county*

and seals levy by distress and sale of the goods of such quaker such money as shall be necessary to defray the expenses of providing such substitute, rendering the overplus (if any), after deducting the charges; and if no goods can be found sufficient to levy, and it shall nevertheless appear to such deputy-lieutenants that such quaker is of sufficient ability to pay the sum of

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*of* M, *yeoman, being one of the people called quakers, hath been duly chosen by ballot to serve as a private militia-man in the militia of the said county, and having had due notice to appear before the deputy-lieutenants in and for the said county, at their sub-division-meeting (for that purpose assembled), to take the oath in that behalf required, and to be inrolled to serve in the said militia as a private militia-man, or otherwise to provide an able and fit person to serve as his substitute, according to the form of the statute in that case made and provided, hath neglected to appear and take the said oath, and to serve in the said militia; and hath also neglected to provide an able and fit person to serve as his substitute, contrary to the form of the said statute: And whereas we* A B *and* C D, *esqrs*, TWO OF HIS MAJESTY'S DEPUTY-LIEUTENANTS *in and for the said county, in pursuance of the authority to us given in and by the said act, have, upon as reasonable terms as might be, that is to say, for the sum of —— pounds, provided and hired a fit person, that is to say,* S S *of* ———, *yeoman, to serve as substitute for him the said* O O *in the said militia, of which the said* O O *hath had due notice: And whereas the said sum of —— hath been duly demanded* * *of and from the said* O O *by* C S, *the clerk of our subdivision-meetings, in pursuance of an authority to him for that purpose given by us the said deputy-*

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* The sum which the deputy-lieutenants may provide a substitute for, ought to be demanded of the quaker previous to the warrant of distress being issued, although the act does not express so much: and the authority to demand the same after stating the quaker's neglect to appear, and that a substitute has been agreed for, as in the above warrant, may run thus:

*—We the said deputy-lieutenants do therefore hereby authorize and require you the said* C S *to demand and receive of and from him the said* O O *the said sum of ——; and if he shall refuse or neglect to pay the same for the space of —— days after such demand made, then you shall certify unto us such refusal and neglect, in order that such proceedings may then be had, as the statute in that behalf made doth direct and require. Given under our hands and seals, the —— day of ——, in the year of our Lord ——.*

10*l.* then such deputy-lieutenants may commit (VIII) such quaker to the common gaol for three months, or until he shall

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*lieutenants, but the said* O O *hath neglected to pay or satisfy the same:* We the said deputy-lieutenants, *do therefore hereby authorize and command you the said constable to levy the said sum of* —— *by distress of the goods and chattels of the said* O O*; and if within the space of* —— *days next after such distress by you taken, the said sum of* ——, *together with the reasonable charges of taking and keeping the same, shall not be paid, then you are hereby further authorized and commanded to sell the said goods and chattels so by you distrained; and out of the money arising by such sale to pay the said sum of* —— *unto* —— *for the use of him the said* S S, *rendering the overplus (if any shall be) unto him the said* O O, *the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if no goods and chattels belonging to the said* O O *can be found whereon to levy such distress, then you are to certify the same to us, together with the return of this warrant. Given under our hands and seals, the* —— *day of* ——.

(VIII) Commitment of a quaker for want of sufficient distress.

Monmouthshire. } To the constable of —— in the said county, and to the keeper of the common gaol at ——, in the said county.

*Whereas* O O, *late of* ——, *in the said county of* ——, *yeoman, being one of the people called quakers, hath been duly chosen by ballot to serve as a private militia-man in the militia of the said county, and having had due notice to appear before the deputy-lieutenants in and for the said county, at their subdivision meeting, for that purpose assembled, to take the oath in that behalf required, and to be inrolled to serve in the said militia as a private militia man, or otherwise to provide an able and fit person to serve as his substitute according to the form of the statute in that case made and provided, hath neglected to appear and take the said oath, and to serve in the said militia; and hath also neglected to provide an able and fit person to serve as his substitute, contrary to the form of the said statute. And whereas we* A B *and* C D, *esqrs. two of his majesty's deputy-lieutenants in and for the said county, in pursuance of the authority, to us given in and by the said statute, have upon as reasonable terms as might be, that is to say, for the sum of* ——, *provided and hired a fit person, that is to say, one* S S *of* —— *labourer, to serve as a substitute for him the said* O O,

have paid such money, as such deputy lieutenants shall have agreed to pay to such substitute; and in case any measures, shall be used in making the distress which may be oppressive, such quaker may complain to the deputy lieutenants at their next meeting, who are to hear and finally determine the same, s. 50.

And where any deputy lieutenant shall provide a substitute for any quaker, the money agreed to be paid to such substitute shall be paid to him upon the certificate of such deputy lieutenant by the overseers out of the poor's rate, and such sum shall be levied in the manner before directed, and repaid to such overseers. 43 *Geo.* 3. *c.* 50. *s.* 12.

Persons balloted liable to

And every person chosen by ballot to serve shall be liable

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*in the said militia, of which he the said* O O *hath had due notice. And whereas the said sum of* —— *hath been duly demanded of and from the said* O O *by* C S *the clerk of our sub-division meetings, in pursuance of an authority to him for that purpose given by us the said deputy lieutenants, but the said* O O *hath neglected to pay or satisfy the same: And whereas on the* —— *day of* —— *in the year aforesaid, in pursuance of the authority to us in that behalf given in and by the said statute, we the said deputy-lieutenants did issue our warrant to the constable of* ——, *to levy the said sum of* —— *by distress and sale of the goods and chattels of him the said* O O: *And whereas it duly appears to us, as well on the oath of the said constable* * *as otherwise, that he hath made diligent search for the goods of the said* O O, *and that he cannot find any sufficient goods of him the said* O O *within his constablewick whereon the said sum of* — *may be levied; nevertheless it doth appear satisfactorily to us, that he the said* O O *is of sufficient ability to pay the sum of* 10l: WE THE SAID DEPUTY LIEUTENANTS *do therefore, by virtue of the authority to us in that case given in and by the said statute, hereby command you the said constable of* —— *aforesaid, to apprehend the body of him the said* O O, *and him safely convey to the common gaol at* —— *aforesaid, in the county aforesaid, and there deliver him to the keeper thereof, together with this our warrant; and we do hereby command you the said keeper to receive into your custody in the said common gaol the said* O O, *and him there safely keep for the space of three months, or until he shall have paid the said sum of* —— *agreed by us to be paid to such substitute as aforesaid. Herein fail not under the pain that will thereon ensue. Given under our hands and seals, the* —— *day of* —— *in the year of our Lord* ——

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* The form of a constable's return of want of distress has been given in p. 369.

to such service, although he may have removed, provided he was residing in such place at the time when the list was prepared; and every person liable to serve, having more than one place of residence, shall serve for the county where his name shall have been first inserted in such list; and the clerk to the subdivision shall, if required, grant a certificate *gratis* under his hand, that such person's name was inserted in such list, specifying the time when such list was made and returned. 42 *Geo.* 3. *c.* 90. *s.* 47.

serve though they may have removed; and having two abodes, to serve for the county where their names were first inserted.

And where any parish shall lie in two or more counties, the inhabitants shall serve in the militia of that county wherein the church is situated. *s.* 48.

Parish situate in two counties.

Whenever it shall appear at any subdivision meeting, that any person chosen is not of the full height of five feet four inches, or is not approved upon examination by a surgeon, and is not seised or possessed of an estate in land, goods or money, of the clear value of 100*l.* and who shall make oath that he is not seised or possessed of such estate, such deputy lieutenants shall discharge such person, and immediately amend the list, and cause another person to be chosen in his stead. *s.* 53.

Persons unfit for service by want of height, infirmity, and reversion of 100*l.*

But no substitute or volunteer offered for service in the militia of *Great Britain*, being of the full height of five feet and two inches, who shall be otherwise able-bodied and fit for service, shall be deemed unfit, or liable to be discharged on account of stature. 40 *Geo.* 3. *c.* 100. *s.* 2.

If the churchwardens or overseers shall with the consent of the inhabitants, taken at a vestry, or other meeting, for the calling of which three days public notice shall be given, specifying the cause, provide and produce to the deputy-lieutenants, at any subdivision meeting, any volunteers who shall be examined and approved as hereinafter-mentioned, such volunteers shall be then and there sworn in and inrolled, to serve as substitutes; and the deputy-lieutenants shall cause only such number of persons to be chosen by ballot out of the list returned for such parish as shall be then wanted to make up the whole number for such parish, tything, or place. 42 *Geo.* 3. *c.* 90. *s.* 42.

Volunteers may be raised with the consent of the parish, and a rate made for paying them a bounty.

And if such churchwardens or overseers shall give to such volunteers any money, not exceeding 6*l.* each, to serve for such parish, such churchwardens or overseers may make a rate upon the inhabitants according to the poor rates, which (being approved by any justice of the peace) such churchwardens or overseers may collect and reimburse themselves such money as they shall have paid to such volunteers, and the overplus (if any) shall be applied as the poor's rate; and if any person shall refuse to pay such rate, any justice, upon complaint by such churchwarden or overseer, by warrant under his hand and seal, may levy the same by distress and sale of the offender's goods,

returning the overplus (if any), after the rate and charges paid; but no person who shall have served in the militia, either by himself or substitute, or who shall be then serving, shall be liable to such rate: also if any person shall think himself aggrieved by such rate, such person may appeal to the next general or quarter-sessions, in like manner as in case of appeals against rates for the relief of the poor. *s.* 42.

Distraining quakers for such rate.

And where any rate shall have been made for providing of volunteers, according to this act, and the churchwardens or overseers shall make complaint to a justice, that any quaker refuses to pay the sum he shall be rated at, such justice shall order such costs and charges to be paid for levying such distress as he shall think reasonable, not exceeding 10*s.* on each of the quakers, where there are no more than two, and where there are a greater number than two, not exceeding 5*s.* on each. *s.* 51.

What persons to be deemed quakers.

But no man shall be deemed a quaker unless he produce at some subdivision-meeting a certificate under the hands of two housekeepers, quakers, acknowledging such man to be of their persuasion. *s.* 51.

Substitutes not appearing to be sworn.

Every person who shall receive money from any other person to serve as his substitute, or from any churchwardens or overseers to serve as a volunteer, and shall neglect to appear at the usual meeting appointed for swearing in the militia-men, or before one deputy-lieutenant, in order to be sworn according to this act, being convicted thereof before any deputy-lieutenant or justice, shall be obliged to return the money to the person, and shall forfeit to such person not exceeding 40*s.* nor less than 20*s.* at the discretion of the deputy-lieutenant or justices; and if such offender shall not immediately return the money received, and likewise pay the penalty, he shall be committed to the common gaol or house of correction for fourteen days, or until the sum shall be returned. *s.* 62.

Justices may order payment of bounties to substitutes and volunteers.

If any person chosen by ballot shall have engaged any other person to serve as his substitute, or if any churchwardens or overseers shall have engaged any person to serve as a volunteer, and shall have agreed to pay a certain sum, it shall be lawful for two deputy lieutenants, or one justice of the peace when the militia of the county shall not be embodied, after such substitute or volunteer has been examined by a surgeon, and approved and inrolled, to order such sum as shall appear to be due to the substitute or volunteer, to be immediately paid to him on inrolment; and where the militia shall be embodied at the time of inrolment, the said deputy lieutenants or justices are to direct any sum, not exceeding one half part of the money engaged to be given, to be paid to him forthwith, or to be advanced to such person, or to such of his family, and in such proportions, as he shall request at the time of inrolment, and the remaining part to be paid to the clerk

of the subdivision meeting, who shall thereupon forthwith remit the same to the paymaster or battalion clerk, to be retained until such substitute or volunteer shall have joined the regiment and been approved at head quarters as fit to serve, and then to be paid or accounted for to such substitute or volunteer; and if he shall not join or be approved of, then such money shall remain in the hands of such paymaster, to be afterwards applied in like manner to the payment of some other substitute or volunteer; and such deputy-lieutenants or justice shall proceed therein for enforcing the payment of such money in the like manner as is directed by 20 *Geo.* 2. *c.* 19. (see title SERVANTS, 65.)

And if any such subdivision-clerk shall neglect to remit such money within one week after paid to him, such clerk shall forfeit 20*l.* *s.* 63.

High constables, and others restrained from taking insurances for providing substitutes or volunteers.

And if any high constable, or chief or other constable, or any adjutant, quarter-master, or serjeant in the militia, shall insure, or take any money for the insurance of, or be in any way concerned in any company, society, partnership, or office, for the insurance of persons, for the providing substitutes or volunteers, or for the paying or returning any money for the providing substitutes or volunteers in the militia, for any person or persons who may be ballotted to serve in the militia, he shall forfeit 50*l.* 43 *G.* 3. *c.* 50. *s.* 15.

Inrolment of servants not to vacate their contracts unless the militia be embodied; and disputes between them and their masters therein how to be settled.

If any servant whatever, hired by the year or otherwise, shall be inrolled, such inrolment shall not vacate the contract between such servant and his master or mistress, or employer, unless the militia shall be embodied or called out, or ordered so to be, or unless such person shall leave the service of his master, mistress, or employer, for the purpose of being trained and exercised for twenty-one days, and shall not return again to the same service at the end of such twenty-one days, or as soon after as reasonably may be, allowing to his employer an abatement from his wages, in proportion to the duration of his absence, to be settled by a justice of the peace as herein-after mentioned; and in every such case, where any dispute shall arise between such servant and his employer, it shall be lawful on complaint to any justice of the peace for the county where the employer shall inhabit, for such justice to hear and determine such complaint, and to examine upon oath such servant or any other witness, and to make such order for the payment of so much wages to such servant in proportion to the service he has performed, or such abatement from his wages in proportion to the duration of his absence from his service, as the case may require, and as to such justice shall seem just, provided the sum in question do not exceed 20*l.* and in case of refusal or non-payment for the space of twenty-one days next after such determination, such justice may issue his warrant to levy the same by distress and sale of the

goods of such master or mistress, or employer, rendering the overplus to the owner after payment of the charges of distress and sale. *s.* 61. 6 *East's Rep.* 76. and title DISTRESS.

No orders to be given to beat up for volunteers in the militia.

If any person shall give orders to any serjeant, drummer, or other person serving in the militia, to beat up for volunteers to serve in the militia, the person who shall give such orders shall, upon proof thereof, and of such beating up, upon oath, before any justice, forfeit 20*l.* one moiety to the use of the person who shall make information thereof before any justice; and if such person shall refuse to declare upon oath, before such justice, from whom he received such orders, such justice is by warrant to commit him to the house of correction, for not exceeding three months. *c.* 65.

## *IX. Forming the militia into regiments and battalions.*

How to be formed into regiments and battalions.

The militia of the several counties, ridings, and places, shall be formed into companies, to consist of not more than 120, nor of less than 60 private men, and to each of such companies there shall be *one captain*, *one lieutenant*, and *one ensign*; and where the number of men raised for any county, riding, or place, is sufficient, the militia thereof shall be formed into one or more regiments, consisting of not more than 12, nor of less than 8 such companies; and where the number of men so raised is not sufficient to form a regiment the same shall be formed into a battalion, consisting of not more than 7 nor of less than 4 such companies; and where the number is not sufficient to form a battalion of four such companies, the same shall be formed into one corps of not less than three such companies. 42 *G.* 3. *c.* 90. *s.* 68.

Proportion of field officers.

The field officers of such regiments, battalions, and corps respectively, shall in no case exceed the respective numbers and ranks following.

In every regiment of not less than 800 privates, *one colonel*, *one lieutenant-colonel,* and *two majors.*

In every regiment or battalion of not less than 480 privates, *one lieutenant-colonel*, and *one major*.

In every battalion consisting of less than 480 private men, one lieutenant-colonel and one major.

And in every corps consisting of three companies one lieutenant-colonel or major, and no other field officer.

But no colonel, or field officer shall be a captain of a company; also every battalion consisting of five companies may have one company of grenadiers or light infantry, to which two lieutenants shall be appointed instead of one lieutenant and one ensign.

And every regiment may have one company of grenadiers

and one company of light infantry, to each of which two lieutenants shall be appointed instead of one lieutenant and one ensign:

Also to every company consisting of ninety private men, there may be two lieutenants and one ensign, or three lieutenants as the case may be. *s.* 68.

But if his majesty shall direct that any proportion of the militia shall be trained to the service of any artillery attached to any regiment or battalion, his majesty may direct that a supernumerary officer of the said regiment or battalion of such rank as his majesty shall order, qualified as aforesaid, shall be appointed for the men so directed to be trained. *s.* 60. Supernumerary officers may be appointed to men trained to the artillery.

But by 43 *G.* 3. *c.* 71, the king may by any order signified by the secretary of state, *at any time during the present war*, direct the number of officers in any regiment, battalion, or corps of militia in actual service, to be augmented by the appointment of such officers, and of such rank respectively, as the exigency of the service may require. s. 1. The number of officers may be augmented.

But the field officers shall in no case exceed the numbers and ranks following; (that is to say in any regiment consisting by establishment of not less than 1000 rank and file, *one colonel*, *two lieutenants*, and *two majors*: in any regiment or battalion consisting (by establishment) of 750 rank and file, *one colonel*, *one lieutenant-colonel* and *two majors*. And no field officer shall be added to any corps consisting (by establishment) of less than 750 rank and file, except in the case herein-after specified. *s.* 2. Proportion of additional field officers.

And in case the colonel of any regiment or battalion, consisting of not less than 480 privates, shall be employed on public duty out of *Great Britain*, an additional major may be appointed to such regiment or battalion, to serve therewith during the absence from *Great Britain* of such colonel. *s.* 2.

The lieutenants, and in their absence the deputy-lieutenants shall proceed in pursuance of his majesty's orders, to do all necessary acts for making such augmentation of such field officers and other officers. And the persons so appointed shall be entitled to such pay during service, and to all other emoluments and advantages as the field officers and other officers of the militia now appointed of the same rank respectively are entitled to. *s.* 3. Lieutenants may make such augmentation of field officers.

And in all cases where it may be found necessary to appoint a second adjutant, the lieutenant of the county may grant to such second adjutant (unless the king disapprove the same) the rank of lieutenant by *brevet*. *s.* 5. Second adjutant to have brevet rank of lieutenant.

His majesty may appoint one person who shall have served in some of his other forces, or in the militia while drawn out and embodied for five years at the least, to be an *adjutant* to each regiment, battalion, or corps, and such adjutant, if appointed out of the other forces, shall, during his service in the militia, preserve his Appointment of adjutants.

rank in the army as if he had continued in that service; and the lieutenant of any county, on the recommendation of the colonel or other commandant of any regiment, battalion, or corps, may appoint the adjutant of such regiment, battalion, or corps, to serve with the rank of captain, provided such adjutant shall have served five years in the militia while embodied, or in the other forces, although such adjutant may not have the qualification for captain:

But no such appointment shall be valid unless in the instrument granting the same it be specified in what regiment, battalion, or corps, such adjutant hath served, and what was the date of his commission.

Also no adjutant so appointed shall, by virtue of the date of such appointment, or otherwise, be entitled to rank above any captain of a company in the militia:

Also, no such adjutant shall by reason of such appointment be entitled to receive any greater pay than as adjutant. *s.* 77.

Independent companies.

In the several counties where the number shall not be sufficient to form a regiment, battalion, or corps of four companies, according to this act, the militia shall be formed into independent companies, each of 120 private men at the most, and sixty at the least, with one captain, one lieutenant, and one ensign to each: and his majesty may order any number of such independent companies of the militia of different counties to be joined together to form a regiment, battalion, or corps, or to be incorporated with any otherregiment, battalion, or corps, provided that the number of companies be not thereby made to exceed the number of companies of which a regiment, battalion, or corps of militia is directed to consist. *s.* 70.

And where no provision is made, his majesty may order the militia to be formed as he pleases.

And his majesty, in every case for which no special provision is made by this act, may cause the militia of any county to be formed and regulated in such manner as to him shall seem meet, conforming in every case, as near as the proportions of men will admit, to the establishment, with respect to regiments, battalions, corps, and companies, in this act directed. *s.* 71.

When lieutenant shall act as colonel.

It shall be lawful for the lieutenant of any county to act as commandant of any regiment, battalion, or corps for such county during such time as there shall not be any colonel or other commandant; but no such lieutenant shall at one time act as commandant of more than one body of militia, whether regiment, battalion, or corps; and where the lieutenant shall take the command of any militia, not being according to this act sufficient to form a regiment or battalion, to be commanded by a colonel, such lieutenant shall notwithstanding be entitled to the rank of colonel, unless such militia shall be united with the militia of any other county; but no such lieutenant shall, by reason of such command, receive any

greater pay than the proper commandant would be entitled to. *s.* 72.

When a battalion is commanded by a lieutenant-colonel who shall have been commandant of the same for five years or longer while embodied, the lieutenant of the county, with the approbation of his majesty, may give to such commandant a commission of colonel. *s.* 73. Lieutenant colonel of five years service, may be appointed colonel.

In any county where the number of men is sufficient to form a battalion of less than 480, but not less than 360 private men, the lieutenant may appoint three qualified persons to serve with the rank of colonel, lieutenant-colonel, and major; but with no higher pay than if they were appointed lieutenant-colonel, major, and captain. How to be officered where the numbers are not sufficient for a regiment.

And when the number shall be sufficient to form three companies of 60 men, but not to form four companies, the said lieutenant may appoint two qualified persons to serve with the rank of lieutenant-colonel, and major, but only one of them shall be entitled to any higher pay than captain.

And when the number of private men is not sufficient to form more than two companies of 60 men, the eldest captain shall serve with the rank of major, but shall only be entitled to the pay of captain. *s.* 74.

Every officer of militia, duly qualified, who may accept a commission or appointment of the same rank in any other militia, regiment, battalion, or corps, shall rank in the general service according to the date of his vacated commission or appointment of the same rank. *s.* 75. Officers to rank according to the dates of their commissions.

When any colonel or other commandant shall be absent from *Great Britain*, and until he shall return and have notified his arrival to the clerk of the peace of the county, and to the commanding officer and adjutant, his majesty may, by warrant under his sign manual, direct that the officer next in command shall act as the commandant; and all powers which might have been exercised by such colonel or other commandant so absent shall be vested in and exercised by the officer next in command: provided that such officer so next in command who shall assume the powers so given to him in consequence of the absence of his colonel, or other commandant, shall, within seven days after he shall assume such powers, notify the absence of such colonel or commandant to the lieutenant of the county; and also, when the regiment, battalion, or corps shall be in actual service, to the secretary at war: also, if such colonel or other commandant shall have given any orders for clothing or other necessaries, or for accoutrements, which ought to be provided in due course, or in pursuance of any order by proper authority, at the time when such order shall be given for the use of his regiment, battalion, or corps, and if before such orders shall be completed, or after the same shall have been completed, and before the money shall be issued for the In the absence of the colonel or commandant, the officer next in command may act.

same, such colonel or other commandant shall leave *Great Britain*, the orders so given by such colonel or other commandant shall nevertheless be completed, and the money issued in respect thereof shall be paid to the order of such colonel or other commandant, notwithstanding his absence; and in like manner, if any officer so next in command shall, in consequence of the absence of his colonel or other commandant, and under the authorities given to him, give any orders for clothing or other necessaries, or for accoutrements, which ought to be provided in due course, or in pursuance of any order by proper authority, at the time when such orders shall be given for the use of his regiment, battalion, or corps, and before such orders shall be completed, or after the same shall be completed, and before the money which ought to be issued shall be issued for the same, the colonel or other commandant shall return and notify his arrival, the orders so given by such officer so next in command shall be completed, and the money issued shall be paid to the order of such officer, notwithstanding the return of such colonel or other commandant. *s.* 76.

Appointment of surgeon.

In every case where the number of private militia-men is sufficient to form a regiment, battalion, or corps, consisting of not less than two companies of sixty private men each, the lieutenant of the county, with the approbation of his majesty, may appoint one proper person who shall have passed an examination at Surgeon's-hall and received his certificate, to be surgeon thereof; and such appointment shall recite the certificate, and an attested copy thereof shall be transmitted to and filed with the clerk of the general meeting; and such surgeon shall, while the militia are disembodied, receive 10*s.* *per* day for every day of his attendance during any exercise of such militia, and the same for every day that he shall attend the inrolments at the subdivision meeting; such last-mentioned attendances being certified by any deputy-lieutenant of such subdivision-meeting to the receiver-general; and in addition thereto, such surgeon shall also receive his reasonable expense for medicines and necessaries for the sick, during the time of exercise, and for his attendance, medicines, and necessaries for the sick serjeants, corporals, and drummers, when actually resident at head-quarters, which shall be repaid him by the receiver-general on an account stated by such surgeon, and certified by the commanding officer and adjutant; and if such corps shall have no adjutant, then by the commanding officer of each company; and such surgeon so appointed shall, during the time of the militia being embodied, receive the pay of a surgeon of infantry in the other forces, and be subject to the like rules, restrictions, and directions, as far as the same may be applicable; and no such surgeon shall be capable of holding any other commission, or of receiving any pay in respect of any other com-

mission in such militia, during the time of his being such surgeon. *s.* 78.

In every case where the number of private men raised in any county is sufficient to form a regiment or battalion of not less than 360 men, the colonel with the approbation of his majesty, may appoint one proper person who has served in the other forces, or in the embodied militia, to be quarter-master; and the lieutenant of the county, on the recommendation of the colonel, may appoint such quarter-master to serve with the rank of lieutenant or ensign, although he may not have the qualification required; but such quarter-master shall not be capable of holding any commission or receiving any pay in respect of any commission in any company during the time of his being such quarter-master. *s.* 79. Appointment of quarter-master.

The colonel or commandant of every regiment, battalion, or corps, consisting of not less than three companies, when not in actual service, may appoint *a regimental or battalion-clerk*, who shall execute the office of pay-master; but where the number of men shall not be sufficient to form three companies of sixty at least, no clerk shall be allowed, but the receiver-general of the land-tax, and others required by this act to remit money to any regimental or battalion clerk, shall remit all monies to be paid in respect of such companies, or on behalf of any man therein, to the commanding officer, who shall account for the same in like manner as a regimental or battalion-clerk. *s.* 80. Appointment of a regimental or battalion-clerk.

But no adjutant, surgeon, regimental or battalion-clerk, pay-master, or quarter-master, shall be capable of being appointed a captain of a company, nor shall any captain of a company be capable of being appointed adjutant, surgeon, regimental or battalion clerk, pay-master, or quarter master. *s.* 81. No adjutant, surgeon, regimental or battalion clerk, to be appointed captain.

No officer entitled to half pay shall be deemed to forfeit such half pay during the time he shall serve as lieutenant, ensign, adjutant, regimental, or battalion-clerk, quarter-master, or surgeon in the militia, but instead of the oath usually directed by the mutiny act, such officer shall take the following oath; Half-pay officers serving as subalterns.

*I A B do swear, that I had not, between the —— and the —— any place or employment of profit, civil or military, under his majesty, besides my allowance of half-pay as a reduced —— in —— late regiment of —— save and except my pay as lieutenant, ensign, adjutant, regimental, or battalion clerks, quartermaster, or surgeon* [as the case may be], *serving in the militia.*

And the taking the said oath shall without any other be sufficient to entitle such person to receive his half-pay*. *s.* 82.

* See also the 19th section of the annual pay and cloathing act, infra.

Appointment of serjeants, corporals, and drummers.

And *serjeants, corporals, and drummers,* shall be appointed to the militia in the following proportions (that is to say), *when not in actual service*, there shall be one serjeant and one corporal to every thirty men, and when drawn out into actual service, an addition shall be made, so that there shall be one serjeant and one corporal to every twenty men, and when *not in actual service*, there shall be one drummer to every company, with an addition of one drummer for each flank company of regiments, or battalions consisting of five or more companies, and when drawn out into *actual service*, there shall be an addition of one drummer to every company. *s.* 83.

And if in any regiment or battalion there shall be a surplus of fifteen men, after the apportionment of one serjeant and one corporal to every thirty men, such regiment shall have one additional corporal, when not in actual service, for such surplus number. *s.* 83.

And all serjeants and corporals shall take the following oath:

Oath to be taken by serjeants and corporals.

*I A B do sincerely promise and swear, that I will be true and faithful, and bear true allegiance to his majesty king* George; *and that I will faithfully serve in the militia within* Great Britain, *for the defence of the same, until I shall be legally discharged.*

Appointment of serjeant major, and drum major.

And the colonel or other commandant of every regiment or battalion, or corps consisting of two or more companies may appoint a serjeant-major, consisting of three or more companies a drum major. *s.* 83.

Serjeants, corporals, and drummers compellable to serve.

And all serjeants, corporals, and drummers having received any pay as such, shall be deemed to be engaged, and compellable to serve until they shall be legally discharged. *s.* 83.

Publicans excepted.

But no person who shall keep any house of public entertainment, or who shall sell ale or wine, or brandy, or other spirituous liquors by retail, shall be capable of being appointed a serjeant, corporal, or drummer. *s.* 83.

Serjeants, &c. may be discharged, and others appointed.

And any serjeant, corporal, or drummer, may be discharged by the colonel, or commandant; and the said colonel or commandant may appoint any proper person in the room of every serjeant, corporal, and drummer, who shall die, desert, or be discharged, all which shall take the like oath as is before required. *s.* 34.

Extra drummers may be kept as fifers or musicians.

Pay of serjeants, &c.

And in case his majesty's lieutenant for any county, or the colonel or commandant of any regiment, battalion, or corps, shall be desirous of keeping up a greater number of drummers than is herein directed to be employed as fifers or musicians for the use of the regiment, and shall be willing to defray the expense of such additional drummers, such lieutenant or colonel, or other commandant, may retain any number of the drummers employed as fifers or musicians, herein over and above the number establish-

ed by this act, to act as fifers or musicians, and such drummers shall be deemed drummers of militia within this act, and shall be subject to the same regulations, penalties, and punishments, as other drummers; and shall continue to serve as drummers so long as they receive pay and clothing, and no longer. *s.* 85.

And the daily pay * of every serjeant, corporal, and drummer, when not in actual service shall be, to every serjeant 1*s.* 6*d.* corporal, 1*s.* 2*d.* and drummer 1*s.*;—and such serjeants, corporals, and drummers shall be new-clothed, when not in actual service, once in two years. *s.* 83. Payofserjeants.

And any serjeant on the establishment of *Chelsea Hospital*, at the allowance of twelve pence a day, or being an outside pensioner at 5*d.* a day and being appointed to serve in the militia, shall receive the said allowance, together with his pay from the militia. *s.* 86. Serjeants on the establishment of *Chelsea Hospital* not to forfeit the same.

And any person who shall have served as a serjeant, corporal, or drummer in the militia for twenty years, and who shall be discharged on account of age or infirmity, shall, on the recommendation of the colonel commandant, and the lieutenant, or two deputy-lieutenants, or on the death, removal, or absence of the lieutenant, or the recommendation of the colonel or commandant, and three deputy-lieutenants, be entitled to examination at the *Chelsea* board, and capable to be placed on the establishment of the Hospital at the pension of five pence *per diem*, if the board judge him deserving thereof. *s.* 86. What service intitles serjeants, &c. to *Chelsea* pension.

## X. *Training and annual Exercise.*

The said militia shall be called out once in every year, for the purpose of being trained and exercised by 43 *Geo.* 3. *c.* 19, for twenty-eight days. 43 *Geo.* 3. *c.* 90. *s.* 87. Militia to be exercised for twenty-eight days annually.

And the men shall be called out in such manner in such proportion, and at such times and places as shall be appointed with the approbation of his majesty, by the lieutenant or deputy-lieutenants at a general meeting, or in default of any such meeting being holden then by the lieutenant of the county, or by three deputy lieutenants. *s.* 87. A proportion may be called out.

But it shall not be lawful to order less than two companies of 60 men at the least with officers and serjeants, corporals and drummers in proportion, to be trained and exercised together, unless the militia do not amount to so many. *s.* 87. Not less than two companies.

And in every county in which it shall have been appointed that the whole shall not be exercised at the same time, then the respective parts thereof shall be exercised successively, until the And in that case to be exercised successively.

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* And for the particular provision for discharging the expenses of the *pay and clothing* of the militia, see *the annual act* in the last division of this title.

whole shall have been trained and exercised, by 43 *Geo.* 3. *c.* 19, for 25 days, *s.* 87.

Places of exercise may be changed.

And it shall be lawful for the lieutenant or deputy-lieutenants at any general meeting, to alter the places appointed for assembling the men for exercise, and appoint other or additional places, as they find expedient, giving the like notice thereof, as is required to be given of the places first appointed. *s.* 87.

Regiments disembodied may be ordered not to be trained for twelve months.

Whenever any regiment, battalion, or corps shall have been disembodied as after directed, his majesty may order that the same shall not be trained or exercised in manner as hereinafter directed, for 12 calendar months, to be calculated from the day on which it shall have been disembodied, or for such number of months not exceeding 12 as his majesty shall think fit. *s.* 88.

Notice of appointing the times of exercise to be given by the clerk of general meetings,

And notices of the times and places of exercise shall by order of the general meetings be sent by the clerk to the clerks of the several subdivision-meetings. *s.* 90.

And the clerks of the subdivision-meetings shall, within 10 days after the receipt of such notices from the clerk of the general meetings, cause a true list, specifying the name and date of the inrolment of all the persons enrolled (within each subdivision) and the time and place of exercise to be transmitted to the commanding officer of the regiment, battalion, or corps, for which such persons have been inrolled, or to such persons as shall be appointed to receive the same, and shall cause a duplicate to be transmitted to the adjutant; and when there is no adjutant, to the major or captain-commandant of such corps. *s.* 91.

of the times and places of exercise.

And the deputy-lieutenants at some subdivision-meeting, after the receipt of the said notices, shall cause the men serving for such subdivision to be called out in such order as shall have been notified by the clerk of the general meetings:

Deputy lieutenants to call the men out.

And shall issue orders to the chief constables of the several hundreds, or other divisions, with directions to forward the same to the constables or other officers within their respective hundreds or divisions;

Notice of the time and place of exercise to be fixed on church doors.

Which officers shall cause such notice to be affixed on the doors of the churches or chapels belonging to their parishes, or (if any place shall have no church or chapel) on the door of the church or chapel of some parish or place adjoining, which notice shall be deemed a sufficient notice to every person inrolled, notwithstanding any omission in the delivery of written notices in manner herein after directed;

And delivered personally or left at the house of each man.

And such officers are also to give notice in writing to the several militia-men who shall be called out to be trained and exercised, by serving them personally, or by leaving the same at their abode, to attend at the time and place mentioned; and all such militia-men shall duly attend according to such notices. *s.* 90.

During the time of exer-

And during such time as any militia shall be assembled for the purpose of being trained and exercised, all the clauses,

provisions, matters, and things contained in any act for punishing mutiny and desertion, and in the articles of war, shall be in force with respect to such militia in all cases whatsoever, but so that no punishment shall extend to life or limb. *s.* 89.

cise, the mutiny act and articles of war shall be in force.

Courts martial.

And it shall be lawful for the officer commanding and present with any detachment or division of militia called out to exercise, not being under the rank of captain, to order, when he shall think it necessary, a regimental court-martial to be held for the trial of any offence committed by any serjeant, corporal, drummer, or private man under and during his command; and if a sufficient number of officers shall not be present to constitute such court-martial, the commanding officer of the regiment, battalion, or corps, to which such detachment or division shall belong, is upon application by the officer commanding such detachment or division, to order a sufficient number of officers of proper rank to attend for the purpose of assisting at such court-martial, and the sentence of such court-martial shall in every case be submitted to the colonel or other commandant, or in his absence, to the senior field officer, for his approval, who shall cause such sentence to be put in execution, mitigated, or remitted, as he shall in his discretion think best for the service. *s.* 89.

Pay of men when called out to exercise.

And the pay of every person inrolled to serve in the militia, when not embodied and called out into actual service, and who shall be called out for the purpose of being trained and exercised, shall commence upon the day on which such person shall join the regiment, battalion, corps, detachment, or division to which he shall belong, and not before: but if such person shall have been prevented joining by sickness or other sufficient cause, and shall produce to the commanding officer a satisfactory certificate of such sickness or other sufficient cause, the commanding officer is to direct an allowance of pay to be made to the person so prevented, according to the time mentioned in such certificate. *s.* 92.

Militia-men falling sick.

And in case any militia-man shall, on his march to the place where he shall be ordered to attend for the annual exercise, be disabled by sickness, or otherwise, it shall be lawful for one justice, or the mayor or chief magistrate of any city or place where such man shall then be, by warrant under his hand and seal, to order him such relief as he shall think reasonable, and the same shall be given by the officers of such parish or place; and the officers giving such relief shall, upon producing an account of the expenses thereof to the treasurer of the county, riding, or place, for which such militia-man shall serve (such account being first allowed under the hand of a justice of the peace), be reimbursed such expenses by such treasurer, who shall be allowed the same in his accounts. *s.* 93.

Billetting.

It shall be lawful for all mayors, bailiffs, constables, tythingmen, headboroughs, and other chief magistrates and officers of cities, towns, parishes, tythings, and places, and in their default or absence, for one justice of the peace inhabiting within or near any city, town, parish, tything, or place (but for no others), to quarter and billet the officers, non-commissioned officers, drummers, and private men serving in the militia, at the times when they shall be called out to annual exercise, in inns, livery stables, ale-houses, victualling-houses, and all houses of persons selling brandy, strong waters, cider, wine, or metheglin, by retail, upon application made to any such mayors, bailiffs, constables, tythingmen, headboroughs, or other chief magistrates, or officers, by his majesty's lieutenant, or by the colonel or other commanding officer of the militia of the county, riding, or place where they shall be so called out to exercise as aforesaid. *s.* 94.

Serjeants, &c. to be billetted when the militia is not embodied.

And when the militia is not embodied, or called out to exercise as aforesaid, all mayors and other chief magistrates and officers aforesaid, or (in their default or absence) any one justice as aforesaid, may, and are, and is respectively required to order and provide convenient lodging, with fire and candle, in such house as aforesaid, for the serjeants, corporals and drummers of the militia. *s.* 94.

Carriages to be provided.

And when the militia shall be called out to be trained and exercised any justice of the peace of any county, riding, or place, being thereunto required by an order from the lieutenant, or from any deputy lieutenant of such county, riding, or place, or from the colonel or other commanding officer of any regiment, battalion, corps, detachment, or division of militia, being within such county, riding, or place, shall issue his warrant to the chief constables, petty constables, or other officers of hundreds, or of the several parishes, tythings, or places, from, through, near, or to which any such regiment, battalion, corps, detachment, or division of militia, shall be ordered to march, requiring them to provide such sufficient carriages to convey the arms, clothes, accoutrements, ammunition, and other stores, with able men to drive such carriages, as shall be mentioned in the said order; and in case such sufficient carriages and men cannot be provided within any such county, parish, tything, or place, then any justice of the peace for any adjoining county, riding, or place, may upon such order as aforesaid being shown unto him, issue his warrant in like manner within such adjoining county, riding, or place, for the purposes aforesaid, to make up such deficiency of carriages and men. *s.* 94.

Rates to be paid for carriages.

And such lieutenant, deputy lieutenant, or other commanding officer, requiring such carriages and men to be provided as aforesaid, shall at the same time pay to such chief constable, or other officer, for the use of the person who shall

provide such carriages and men, 1*s. for every mile any waggon with five horses, and any wain with six oxen, or with four oxen and two horses, shall respectively travel: and* 9*d. for every mile any such cart with four horses shall travel, and so in proportion for any carriages drawn by any less number of horses or oxen;* for which sums such chief constable or other officer is required to give a receipt; and such chief constable, or officer, shall order and appoint such persons having carriages, within their respective hundreds, parishes, or places, as they shall think proper, to provide and furnish such carriages and men, according to the warrant aforesaid; and every person so ordered, is required to provide and furnish the same accordingly for one day's journey, and no more. *s.* 95.

To go only one day's journey.

And in case any such chief constables, or other officers, shall be at any charges for such carriages, over and above the money which shall be so received by them as aforesaid, such overplus shall be borne, by every county, riding, or place, where such additional expense shall be incurred, and be repaid to them without fee or reward by the treasurer of every such county, riding, or place, out of the public stock. *s.* 95.

Allowance from the county.

And when any regiment, battalion, or corps of militia, or any detachment or division thereof, shall be assembled for the purpose of being trained and exercised, it shall be lawful for the captain or commanding officer of every company to put the militia-men of his company under stoppages, not exceeding 4*d. per* day, for the purpose of providing them with linen, and also with other necessaries, and for defraying the expense of repairing any arms which shall have been broken or damaged by any such militia-man's neglect: but every such captain or officer shall account with each man for such stoppage, and after having deducted what shall have been laid out, shall pay the sum remaining (if any be) into the hands of the man to whom the same belongs, before he be dismissed from such training and exercise. *s.* 96.

Stoppages of pay during exercise.

The colonel or other commanding officer of every regiment, battalion, and corps of militia, as often as his regiment, battalion, or corps shall be called out to exercise, and within fourteen days from the time of assembling, shall return to the lieutenant of the county, a true state of such regiment, battalion, or corps, and a duplicate thereof to the clerk to the general meetings, to be filed; and where the militia shall be ordered to be trained and exercised in parts, the officer commanding every part shall, within seven days after assembling of such part, make a return of the state of the militia exercised by him to the colonel or commanding officer, on pain of forfeiting 20*l.* and the colonel or commanding officer shall, within fourteen days after all the returns shall have been received by him, transmit a general return to the lieutenant of the county, and a duplicate thereof to the clerk of the general meetings, to be filed;

Returns to be made by the colonel.

Penalty for neglect.

and in case any officer shall refuse or neglect, for three months after the time herein appointed for making such returns, so to do, he shall forfeit 50*l.* *s.* 97.

Captains to make out a return of their companies.

And the captain or commanding officer of every company called out to exercise shall, during the time of such exercise, make out a correct return of the state (F) of the classes of the men belonging to his company, specifying the particulars therein mentioned, and the subdivision to which every man shall belong, and shall transmit the same to the adjutant, or, where there shall be no adjutant, to the commanding officer of the militia of the county, to which such company shall belong:

(F) *Form of the Return.*

Return of —— company in the —— of the militia of the county of —— dated the —— day of ——

| Hundreds or divisions. | Parishes. | NAMES OF MEN SERVING. | | | Ages. | CLASSES. | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Principals. | Substitutes. | Volunteers. | | 1st. | 2d. | 3d. | 4th. | last. |
| *H.* | Islington. | S. Jones. | — | — | 32 | | × | | | |
| — | — | — | T. Grey. | — | 24 | — | — | — | × | — |
| — | — | — | — | I. Smith. | 26 | × | | | | |
| M. | H | — | — | — | — | | × | | | |
| — | — | — | — | — | | | × | | | |
| Totals. | | | | | | | | | | |

Signed *A. B.* captain of —— company.

And such adjutant or commanding officer shall, within one month after such exercise as aforesaid, make out a general return of all such classes, according to such form, and with such specification, and shall transmit the same to the clerk of the

general meetings, and shall also transmit to the clerks of the subdivision meetings extracts of such return, containing the state of the classes of men belonging to their subdivisions:

And such subdivision clerks shall correct the books of enrolment of their subdivisions, so as to correspond with such return; and the clerks to the general meetings shall upon receipt of such return, and within two months after the expiration of such exercise, transmit to one of the principal secretaries of state, correct abstracts (G) of all such returns; and every person so required to make any such return, who shall refuse or neglect to make the same, shall forfeit 50*l.* *s.* 98.

(G) *Form of this Return.*

Return of private militia serving for the county of ——
Dated the ——— day of ———

| Description of men. | No. of each. | Years of service unexpired. | | | | | No. of men in each class. | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 1. | 2. | 3. | 4. | 5. | 1st. | 2d | 3d. | 4th. | Last. |
| Principal | | | | | | | | | | | |
| Substitutes | | | | | | | | | | | |
| Volunteers | | | | | | | | | | | |
| Totals. | | | | | | | | | | | |

*A. B.* clerk to general meetings.

*N. B.* If the militia of any county, riding, or place is divided into more than one regiment, battalion, or corps, a separate return is to be made for each, and the description of the regiment, &c. put at the top of the return.

Muskets to be marked.

All muskets delivered for the service of the militia shall be marked with the letter (M) and the name of the county, riding, or place, to which they belong. *s.* 101.

Penalty on militia-man selling his arms, &c.

And in case any militia-man shall sell, pawn, or lose any of his arms, clothes, or accoutrements, or neglect or refuse to return the same in good order to his captain, or to the person appointed to receive the same, such militia-man shall forfeit, not exceeding 3*l.* and if he shall not immediately pay such

penalty, the justice before whom he shall be convicted shall commit him to the house of correction, to be kept to hard labour, for not exceeding three months, or until he shall have paid the penalty. *s.* 101.

Penalty on the buyers and receivers.

And if any person shall knowingly buy, take in exchange, conceal, or otherwise receive any militia arms, clothes, or accoutrements, or any such articles belonging to any militia men, as are generally deemed regimental necessaries, paid for by deductions out of his pay, or any public stores or ammunition whatever, delivered for the militia, upon any pretence whatsoever, contrary to this act, the person so offending shall forfeit 10*l.* which if not immediately paid, and there are not sufficient goods to levy such penalty, the justice shall commit him to the common gaol for six months, or until he shall have paid the said fine, or shall cause such offender to be publicly or privately whipped. *s.* 102.

Where arms are to be kept.

And the arms, accoutrements, clothing and other stores, belonging to every regiment, battalion, or corps, when not embodied, shall be kept in such place as the colonel or commandant shall direct, with the approbation of the lieutenant of the county. *s.* 106.

And the general meeting may order a convenient place for that purpose to be provided or built, the hire or cost whereof shall be paid by the treasurer of the county. *s.* 106.

All the serjeants, &c. to reside where the arms are kept.

And all the serjeants, corporals, and drummers shall constantly be resident within the city or place where the arms belonging to the regiment, battalion, or corps, are kept, and shall be under the command of the adjutant, who also shall be constantly resident within the said place (unless as hereinafter provided), and shall act in such command under the orders of the colonel or other commandant. *s.* 107.

Monthly returns to be made of the serjeants, &c.

And the adjutant, and in his absence, the serjeant-major, or (where there is no serjeant major) the senior serjeant, shall make monthly returns of the true state of the serjeants, corporals, and drummers, to the secretary of state, to the lieutenant of the county, and to the colonel or other commandant; in default of which, on each neglect such adjutant or serjeant major shall be subject to such punishment as a court martial shall adjudge. *s.* 107.

No serjeant, &c. to be absent without a furlough.

And no serjeant, corporal, or drummer, shall be absent from such place, without a regular furlough or license in writing, signed by his colonel or commandant. *s.* 107.

Pay during furlough.

And every serjeant, corporal, and drummer, absent on furlough or license, shall receive during the time of absence the pay followiug; *every serjeant* 1*s.* *every corporal* 8*d.* and *every drummer* 6*d.* *per* day, and no more. *s.* 107.

And every serjeant, corporal, and drummer, who shall absent himself without such furlough or license, shall forfeit all

pay during the time of absence, and be liable to be apprehended and punished as a deserter. *s.* 107.

Adjutant not to be absent without leave.

And such adjutant shall never absent himself without leave of the colonel or commandant, nor for more than three calendar months in one year, except in case of sickness. *s.* 107.

By whom serjeants, &c. are to be commanded in absence of adjutants.

And whenever such adjutant shall be absent as aforesaid, then such serjeants, corporals, and drummers shall be under the command of the battalion clerk, if he shall be a commissioned officer, or otherwise of the serjeant-major, or of some serjeant who shall be appointed by the adjutant, with the approbation of the colonel or commandant, or of the senior serjeant when the corps has not any adjutant or serjeant-major. *s.* 107.

Adjutant, serjeants, &c. to be subject to the mutiny act.

Every *adjutant*, *serjeant-major*, *serjeant*, *corporal*, *drum-major* and *drummer* of the militia, shall be subject to the acts for punishing mutiny and desertion, and for the better payment of the army and their quarters, and to the articles of war, under the command of the colonel or commanding officer, who may direct courts martial to be held as hereinafter directed, for the trial of any *serjeant-major*, *serjeant*, *corporal*, *drum-major*, or *drummer* of such regiment or battalion for any offence committed during the time such regiment or battalion was not embodied; but so that no punishment shall extend to life or limb. 42 *Geo.* 3. *c.* 90. *s.* 103.

Serjeants, &c. may be tried by a court martial.

Courts martial how to be held.

And if a sufficient number of officers to form a court martial cannot be found, it shall be lawful for the colonel or other commandant, and in his absence for the senior field officer of the regiment, battalion, or corps to which the person on whom such court martial is to be held, shall belong, to order any officers of the militia of the county, riding, or place, to which such regiment, battalion, or corps, shall belong, actually resident within the town where such serjeant-major, serjeant, corporal, drum-major, or drummer is to be tried, or within ten miles thereof, to attend and assist as members of such court martial, who shall thereupon attend at the time required, and assist accordingly, but no officer shall be entitled to receive pay for any such attendance: provided always, that no sentence of any court-martial held as aforesaid on any serjeant-major, serjeant, corporal, drum-major, or drummer, or private man as aforesaid, shall be put in execution, until it shall have been confirmed by the colonel or other commandant, or by the field officer by whose order such court martial was assembled. *s.* 104.

Sentence not to be put in execution until confirmed.

Non-commissioned officers and drummers may be reduced.

Any serjeant, corporal, or drummer of the militia, may, by sentence of a court martial, be reduced to the condition of a private militia-man, to serve as such during any time not exceeding 15 months, in case the regiment, battalion, or corps to which he belongs, shall not be then embodied or called out into actual service; and in case the regiment, battalion, or

corps to which he belongs shall be then embodied or called out into actual service, to serve as aforesaid, until they are disembodied, when he shall be discharged, if not re-appointed. *s.* 108.

### XI. *Not appearing at, or deserting from, annual exercise.*

Men not appearing at the time and place of exercise.

Every militia man (not labouring under any infirmity incapacitating him) who shall not appear at the time and place appointed for being exercised, shall be deemed a deserter, and if not taken until after the time of exercise, shall forfeit 20*l.* and also every militia-man who, having joined, shall desert or absent himself during such exercise, and shall not be taken until after, shall forfeit 20*l.* and if such penalty shall not be immediately paid, the justice of the peace before whom any militia-man shall be convicted, shall commit such militia man to the house of correction to hard labour, or to the common gaol, there to remain for six months, or until he shall have paid the penalty. 42 *Geo.* 3. *c.* 90. *s.* 99.

If men absent themselves and do not return, or are not taken within three months, others to be ballotted for.

In case any militia-man shall desert, or absent himself, and shall not return and voluntarily surrender himself to the adjutant or any other officer commanding at the place where the arms of the regiment, battalion, or corps, shall be deposited, or shall not be taken within three months from the time of his so deserting or absenting, then upon certificate thereof from the commanding officer of the regiment, battalion, or corps, to the deputy lieutenants, at any of their meetings for the subdivision, such deputy lieutenants, or two of them, are to hold a subdivision meeting, and to proceed to ballot for another to serve and be returned in the room of such man. *s.* 100.

When they return or are taken, to be compelled to serve.

And in case such militia-man shall at any time thereafter return or be taken, he shall be compelled to serve in the same manner, and for the same term as if no person had been chosen in his room. *s.* 100.

Method of proceeding when information is received of the residence of a militia-man, not joining at the annual exercise.

If any militia-man shall not join the regiment, battalion, corps, detachment, or division to which he belongs, at the time of annual exercise, or shall desert during the time of annual exercise, and shall not be apprehended before the expiration of the time appointed for such exercise, and if the commanding officer, or the adjutant, or the commanding officer of the company or division, shall receive information of the place where he shall be, such commanding officer, or adjutant, may, by writing under his hand, describe the person, and also certify that he did not join at annual exercise, or that he deserted, and send the same by a serjeant, corporal, or drummer, to the adjutant or serjeant-major of the regiment, battalion, or

corps, or to the senior serjeant where there is no adjutant or serjeant-major, of the county wherein such offender is supposed to be; and the adjutant, serjeant major, or senior serjeant, to whom such certificate shall be sent, shall forthwith direct a party of serjeants, corporals, or drummers to assist in apprehending such offender, and in conveying him before some justice of the peace; and if by his confession, or the testimony of any witness upon oath, or the knowledge of such justice, it shall appear that such person is guilty of such offence, such adjutant, serjeant-major, or senior serjeant, shall order a party of the serjeants, corporals or drummers under his command, to convey such offender to the head quarters of the corps of the next county, in the way to the county to which such offender belongs, and deliver him into the custody of the adjutant or serjeant major of such corps, or senior serjeant, who shall cause him to be conveyed in like manner to the adjutant or serjeant-major of the corps, or senior serjeant of the next county, and so on in like manner until such offender shall be delivered into the custody of the adjutant or serjeant-major, or senior serjeant of the corps to which he belongs, who shall take him before a justice of the peace, to be dealt with as this act directs in cases of militia-men deserting or absenting themselves; and from the time of his being so apprehended, until he is brought before such justice, such offender shall be subsisted at the rate of *6d. per* day from the stock of the county; for which subsistence such justice is to make such order upon the treasurer of the county. *s.* 108.

Serjeants, corporals, or drummers deserting.

And if any serjeant, corporal, or drummer, shall desert, any headborough, constable, or other officer of the peace where any person who may be reasonably suspected to be such deserter shall be found, may cause such person to be apprehended and taken before any justice, in or near to such place, who is to examine such person; and if by his confession, or the testimony of any witness upon oath, or by the knowledge of such justice, it shall appear that such suspected person is such deserter, such justice shall forthwith cause him to be conveyed to the common gaol where he shall be found, or the house of correction, or other public prison near to which such deserter shall be apprehended, there to remain until he shall be demanded by some person authorized to receive him as after directed, and shall transmit an account thereof to the clerk of the general meetings of the county, to which such deserter belongs; and the keeper of such gaol, house of correction, or prison, shall receive the full subsistence of such deserter at the rate above specified, for his maintenance during the time he shall continue in his custody, but shall not be entitled to any fee on account of his imprisonment; and such clerk of the general meetings receiving such account, shall transmit a copy thereof to the colonel or commanding officer; and also to the adjutant or other

officer commanding the serjeants, corporals, and drummers; and where there are more than one regiment, battalion, or corps in any county, such clerk shall send such copy to each of the colonels or other commandants, or commanding officers; and also to each of the adjutants or officers commanding, serjeants, corporals, and drummers within his county; and the colonel or commanding officer of the corps to which such deserter shall be found to belong, or the adjutant or officer commanding as aforesaid, shall immediately on receiving such copy, send any serjeant, corporal, or drummer, or any party of serjeants, corporals, or drummers, to the place where such deserter shall be confined, and shall also send an order under his hand and seal to the keeper of the prison, requiring him to deliver such deserter, which he is to do; and the serjeant, corporal, or drummer to which such deserter shall be so ordered to be delivered, shall apply to the adjutant or serjeant-major, or to the senior serjeant of the corps where such deserter shall be confined, who shall order a sufficient party of the serjeants, corporals, or drummers under his command, to assist in conveying such deserter; and he shall be conveyed to the adjutant or serjeant-major, or senior serjeant of the corps to which he belongs, in the same manner as before directed with respect to the conveying of private militia-men to the adjutant or serjeant major of the corps, or senior serjeant of the corps to which they belong; and such adjutant, or serjeant-major, or serjeant, shall take such deserter before a justice of the peace of the county to which he belongs, who shall cause him to be conveyed to the common gaol, house of correction, or other public prison, where he shall remain, until a court-martial shall be summoned, and held for his trial, according to this act, when he shall be delivered to the person named in any order to be issued under the hand and seal of the officer by whose authority such court-martial shall be summoned. *s.* 108.

Gaolers to receive deserters on pain of 20s.

And all gaolers shall (if required by any serjeant, corporal, or drummer employed in conveying any such militia-man, or serjeant, corporal, or drummer so offending) receive into their custody such offender for not exceeding twenty-four hours, and such gaoler who shall refuse so to do shall forfeit 20*s*. *s.* 108.

Serjeants conveying deserters to be billeted on their march.

And such serjeants, corporals, and drummers, while they are employed in executing such duty, and all other serjeants, corporals, and drummers, while on any march or any duty upon which they may be commanded by any legal authority, shall be billeted in like manner as his majesty's other forces employed in apprehending deserters are. *s.* 108.

Reward for apprehending deserters.

The justice of the peace before whom any deserter shall be convicted, shall issue his warrant to the clerk of the regiment, battalion, or corps, or (where there is no clerk) to the commanding officer, requiring such clerk, or such commanding

officer, to pay out of the stock of such corps, 20*s.* to the person who shall have apprehended such deserter, which is to be paid on demand. *s.* 109.

Penalty on concealing men.

If any person shall harbour, conceal, or assist any deserter, knowing him to be such, he shall forfeit 5*l.* *s.* 110.

If his majesty shall, by proclamation, pardon deserters, &c. who shall deliver themselves up by a certain day, the commandant shall, as soon as may be after that day, cause lists to be made out of such as have not delivered themselves up, and certify the same to the clerks of the general meetings, who shall publish the same in the newspapers, and shall transmit copies to the war-office.

And in case his majesty shall by any proclamation extend his pardon to all such militia-men, who shall have made default by not appearing, or by desertion, or absence from duty, and who shall return to and join their regiments, battalions, corps, or independent companies, or deliver themselves up at the head quarters of any other regiment, battalion, corps, or independent company of militia, or to any detachment of his majesty's other forces, or to any military post, on or before any day named in such proclamation, the colonels or other commandants of the militia, shall, as soon as the same can be done after such day, cause lists to be made out of all such defaulters, deserters, and absentees, who shall not appear, and return to and join, or deliver themselves up as aforesaid, together with the last residences, and the descriptions of such men, when the same can be procured, and shall certify the same to the clerks of the respective general meetings, who shall immediately publish the same in one or more of the public newspaper, usually circulating in the counties, to the militia of which such men shall belong; the expense of such publication as aforesaid to be paid by the receiver general of the county, and shall also forthwith transmit to the secretary at war, or his deputy, true copies of such lists and descriptions, in order to the publication thereof in every part of *Great Britain*, in case it shall appear expedient so to do. 43 *Geo.* 3. *c.* 50. *s.* 5.

How the expense of publication shall be paid.

All persons shall apprehend deserters, &c. and such as are substitutes or volunteers, upon being identified before a court martial, and found able, shall be sent to serve in the forces stationed abroad, and the persons who shall apprehend them shall be entitled to 20*s.*

And it shall be lawful for all justices of the peace or magistrates, and all constables and peace officers, and all other persons whatever, to apprehend, seize, take, and detain such defaulters, deserters, or absentees, for the purpose of delivering them into safe custody, at any military head quarters, or into gaol, near to the place where they shall be apprehended as aforesaid; and all such defaulters, deserters, or absentees, as aforesaid, being substitutes or volunteers in the militia, upon being identified before any general or regimental or detachment court martial, shall, if found on examination to be fit for service, be sent in manner directed by the acts, to serve in his majesty's regular forces stationed abroad, until duly discharged therefrom: and the person who shall apprehend, seize, take and detain any such defaulter, or deserter, or absentee, as aforesaid, and deliver him into safe custody as aforesaid, shall be entitled to receive 20*s.* over and above any reward to which such person may be entitled under any act for punishing mutiny and desertion, to be paid in like manner as any such reward may be payable. *s.* 5.

Men who shall return shall remain with the corps to which they belong.

And all private militia-men who shall have so made default, or deserted, or absented themselves from duty as aforesaid, and who shall return in obedience to such proclamation, shall remain with the regiment, or battalion, to which they belong, notwithstanding the same shall be completed; and shall be considered as supernumeraries and be carried to the account of the parish for which they have been inrolled, for the purpose of making a part of the supplementary militia, or to supply vacancies. *s.* 6.

Penalty on enlisting in his majesty's other forces.

And in case any officer, serjeant, or other person, shall knowingly enlist any man to serve in his majesty's other forces, who at the time of enlisting shall be engaged to serve in the militia, such enlisting shall be void; and in case any militia-man, at the time of offering to inlist, shall deny to the officer that he is (at the time of offering to enlist) a militia-man then actually engaged to serve (which the said officer is to ask), or shall offer himself to be inrolled, and serve in any other regiment of militia, every militia man so offending shall, on conviction thereof, upon the oath of one witness before one justice, be committed to the common gaol, or house of correction, for not exceeding six months, over and above any penalty or punishment to which such person shall be otherwise liable; and every person so offending, from the day on which his engagement to serve in the militia shall end, and not sooner, shall belong, as a soldier, to such corps into which he shall have been so enlisted. 42 *Geo.* 3. *c.* 90. *s.* 64.

And if any officer, serjeant, or other person, shall enlist any man belonging to the militia, to serve in his majesty's other forces, knowing him to belong to the militia, or without asking him if he belongs to the militia, he shall forfeit 20*l.* *s.* 64.

And if any person actually serving in any of his majesty's other forces shall offer to serve, and be inrolled as a substitute in the militia, he shall forfeit to the person informing 10*l.* or be committed to the common gaol or house of correction, for not exceeding three months. *s.* 64.

### *XII. Drawn out and embodied.*

In what cases militia may be drawn out.

*In all cases of actual invasion, or imminent danger thereof, and in all cases of rebellion or insurrection,* his majesty (the occasion being first communicated to parliament, if sitting, or declared in council, and notified by proclamation, if no parliament be sitting) may direct the lieutenants of the counties, or on their death or removal, or absence, three deputy lieutenants with all convenient speed to draw out and embody all the regiments of militia within their respective counties, ridings or places, or so many of them, or such proportion of them,

as his majesty shall judge necessary to put the said forces under the command of such general officers as his majesty shall appoint; and may direct the said forces to be led by their officers into any parts of *Great Britain*, for repelling and preventing of any invasion, and for the suppression of any rebellion or insurrection within *Great Britain*. 42 *Geo*. 3. *c*. 90. *s*. 111.

When the militia is ordered out, the county lieutenant to issue orders accordingly.

And the lieutenant of every county, or on his death, removal, or absence, any three deputy lieutenants, to whom any such order from his majesty shall be directed, shall issue orders to the chief constables, of the hundreds, with directions to forward the same to the constables of the parishes within their hundreds: and such constables upon receipt thereof, are forthwith to cause notice in writing to be given to the militia-men, or left at their usual places of abode, within their parishes, to attend at the time and place mentioned in such order. *s*. 114.

Militia-men not marching to be deemed deserters.

And if any man so ordered to be drawn out (not labouring under any infirmity incapacitating him) shall not appear and march in pursuance of such order, such militia-man shall be liable to be apprehended and punished as a deserter, according to any mutiny act. *s*. 116.

Penalty on concealing them.

And if any person shall harbour any militia man, when ordered out into actual service, knowing him to be a militia-man, such person shall forfeit 100*l*. *s*. 116.

Parliament to meet within fourteen days after it is called out.

But whenever his majesty shall cause the militia to be drawn out and embodied, if parliament shall not meet within fourteen days, his majesty may issue a proclamation for the meeting of parliament, within fourteen days, and it shall accordingly meet upon such day, and continue to sit and act as if it had stood adjourned or prorogued to the same day. *s*. 113.

Militia not to be led out of Great Britain.

And neither the whole nor any part of the militia shall on any account go out of *Great Britain*. *s*. 112.

To be subject to the mutiny act.

And from the time of any regiment, battalion, or corps being called out and embodied, until the same shall be returned to its own county and disembodied, the officers, non-commissioned officers, drummers, and private men of the several regiments, shall be subject to all the provisions in any act, for the punishment of mutiny and desertion. *s*. 10.

Militia officers not to sit on the trial of officers of other forces.

But no officer in the militia shall sit in any court martial upon the trial of any officer or soldier, serving in any other forces; nor shall any officer in the other forces sit in any court martial upon the trial of any officer or private in the militia. *s*. 115.

And when again disembodied to be subject to the same regulations as before.

And when the militia having been drawn out into actual service shall be again disembodied, and the officers and privates dismissed, the officers, non-commissioned officers, drummers and private men, shall be subject to the same orders, directions and engagements only, as they were subject to under this act, before they were drawn out. *s*. 145.

Agent to be appointed by the colonel.

When any regiment shall be drawn out into actual service, and during the time of actual service, the colonel, or other commandant, shall appoint an agent to such regiment, and take security from him; and such colonel or commandant shall be liable to make good all deficiencies that may happen, from the said agent or himself, upon account of the pay, clothing, or public stock of such regiment. *s.* 120.

Militia-men when embodied to be as the other forces.

And from the date of his majesty's warrant for drawing the militia out into actual service, the officers and private men shall be entitled to the same pay as the officers and private men of his majesty's other infantry forces. *s.* 117.

And if disabled entitled to Chelsea Hospital.

And if any non-commissioned officer or private man of the militia shall be maimed or wounded in actual service he shall be entitled to the benefit of *Chelsea Hospital.* *s.* 117.

Pay to commence from the day of joining.

But the pay of every officer, serjeant, corporal, drummer, and private man, who shall not join his regiment, battalion, or corps of militia, on the day appointed for that purpose, shall commence only from the day of his joining the same, unless he shall have been prevented from joining by sickness or any other inevitable necessity, to be proved to the satisfaction of the commanding officer, in which case such officer, serjeant, corporal, or drummer, or private man may, by order of his commanding officer, be accounted with for his pay from the date of his majesty's warrant. *s.* 118.

And the pay of every person inrolled to serve in the militia, after such militia shall have been embodied and called out into actual service, shall commence upon the day on which such person shall join the regiment, battalion, or corps to which he shall belong; provided always, that it shall be lawful for the deputy lieutenants, or justices of the peace by whom any such person shall have been so inrolled, to order and direct an allowance to be made to him for the purpose of enabling him to proceed and join the regiment, or battalion to which he may belong, not exceeding the rate of the pay of so many days as would enable him to march from the place where he was inrolled to the place where the said regiment, battalion, or corps may be stationed, to be calculated at the rate of not less than 10 miles *per* day, with the usual number of halting days; and the said allowance of pay shall be advanced to such person at the time of his inrolment by the clerk of the subdivision meeting, under the order of the deputy lieutenants or justices aforesaid, or one of them, and shall be repaid to the said subdivision clerk by the receiver general of the land tax, on the production of a certificate to that effect, signed by the said deputy lieutenants or justice, or one of them, and the said receiver general shall be allowed for the same in his accounts accordingly. *s.* 119.

Militia-men to receive one guinea when ordered out.

When the militia shall be ordered out into actual service, the receiver general of the land tax shall pay to the captain or commanding officer of every company one guinea, for the use of

every private man belonging to his company: and the receiver general shall also pay to every captain or commanding officer of a company, one guinea for every recruit, after such recruit shall have joined his company, while in actual service (all which money paid by the receiver general shall be allowed in his account); and the money so received by any captain or commanding officer (or so much thereof as he shall think proper) shall be laid out in the manner he shall think most advantageous for the militia-men; and such officers shall on or before the 24th of the month, next ensuing that in which he shall have received such one guinea as aforesaid account to such militia-man how the said guinea hath been applied, and shall pay the remainder (if any) to the said man. s. 121.

And persons not possessed of 500*l*. who shall personally serve or find a substitute when the militia is drawn out into actual service, are to be paid one-half of the current price of volunteers.

And in case any person not possessed of an estate in land, goods, or money, of the clear value of 500*l*. and who shall make oath that he is not possessed of such estate, shall be chosen to serve when the militia is ordered out for actual service, and such person shall be sworn and inrolled, or shall provide a substitute; the churchwardens or overseers, of the parish shall, on receiving an order (IX) under the hands of two deputy lieu-

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(IX) The form of such order *.

Monmouthshire, to wit. } To the churchwardens and overseers of the poor of the parish of ——— in the said county.

*Whereas* MM, *of the said parish of* ——, *mason, hath been duly chosen by ballot to serve in the militia of the said county for the said parish, and hath been sworn and inrolled,* [or *hath provided* S S *of* —— *(a fit person) to serve as his substitute, who hath been sworn and inrolled*] *to serve therein: And whereas the said* M M [or *S S* as the case is] *hath accordingly served in the said militia for the space of one month, and hath not been disapproved of or discharged by the commanding officer: and whereas the said* M M *hath made oath before us* A B *and* C D, *esqrs, two of his majesty's deputy lieutenants for the said county, that he is not possessed of an estate in land, goods, or money, of the clear value of* 500*l*: WE THE SAID DEPUTY LIEUTENANTS *do therefore, in pursuance of the statute in that behalf made and provided, order you the said church-*

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* As this order is not payable by the latter part of the above clause, if the militia-man is disapproved of, and discharged within a month after inrolment, the deputy lieutenants ought to suspend the issuing of such order until the month is elapsed, and agreeable to this the above precedent is named.

tenants, pay such person not exceeding the sum which such deputy lieutenants shall adjudge to be one half of the current price then paid for a volunteer in the county where such person was chosen, which money shall be taken out of the poors rate, to be made as is above directed * for providing volunteers; or in case no volunteers shall be provided by the churchwardens or overseers, then out of a rate to be made and collected agreeable to the poors rate, as is above directed. *s.* 122.

And in case any churchwarden or overseer shall refuse or neglect to pay such money upon demand, and the producing of such order, such churchwarden or overseer shall forfeit 10*l.* one half to the person chosen, in lieu of the sum ordered to be paid to him. *s.* 122.

But if any man chosen and serving for himself, shall within one month after his inrolment be disapproved of, and discharged by the officer commanding the regiment, such sum shall not be paid to the person chosen, but shall be paid to the next person chosen in his stead; and if any substitute be disapproved and discharged, then no such sum shall be paid to the man chosen, whose substitute shall have been disapproved, unless he serve himself, or find another substitute. *s.* 122.

Return of men willing to continue their service.

And whenever any regiment, battalion, or corps, shall be embodied, and absent from the county to which it belongs, the commanding officer shall apply to every man whose time shall be within four months of expiring, and who, in his judgment, shall be fit to serve, and inquire if he is willing to continue in the service, and for what price; and such commanding officer shall, on the 1st *Jan.* 1st *March*, 1st *May*, 1st *July*, 1st *Sept.* and 1st *Nov.* transmit to the clerk of the general meetings a list of all such men as he shall find willing to continue in the service, in which list shall be set down the sums they are willing to con-

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* See p. 373 supra.

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*wardens and overseers, upon sight hereof, to pay unto the said, M M the sum of ——, which we do adjudge to be one half the current price now paid for a volunteer in the said county which said sum of —— you the said churchwardens and overseers are to pay out of the poor's rate made for providing and producing volunteers within your parish; or in case no volunteers are provided or produced by you in your said parish, then out of a rate, to be made after the manner of the poors rate, excepting out of the said rate all persons chosen by ballot, or who have served in the militia, either by themselves or by substitutes, according to the directions of any statute in that behalf made, or who shall be now serving by themselves or by substitutes in the said militia. Given under our hands and seals the —— day of ——, in the year of our Lord——.*

tinue for and which list shall be signed by every such militia man, and made in the following form; *viz.*

Dated the day of

| Name of the county. | Names of the men. | Of the parish of | In the hundred of | Time of service expires on the | Sum for which they engage to serve. | Signature of consent. |
|---|---|---|---|---|---|---|
| | *A. B.* | *P* | *H.* | | | *A. B.* |
| | *E. F.* | *Q.* | *I.* | | | *E. F.* |
| | *G. K.* | *R.* | *N.* | | | *G. K.* |

And the signing of the said roll shall be binding upon the persons signing. *s.* 123.

Extracts of the returns to be transmitted to the clerks of subdivisions.

And the clerk of the general meetings shall, as soon after the receipt of such notices as the same can be done, transmit to the respective clerks of the subdivision meetings, for the use of the deputy lieutenants acting in such subdivisions, correct extracts of such returns, specifying in every such extract the men that shall have been enrolled for the subdivision to which the clerk, to whom any such extract is sent, shall belong; and thereupon it shall be lawful for such deputy lieutenants, if they shall think fit, to cause the men willing to continue to serve as aforesaid, to be enrolled as volunteers for the particular and respective parishes or places for which they shall have been originally enrolled to serve, and in every such case to direct and require the churchwardens or overseers of the poor of such parish or place, to remit the bounty or bounties to be given to such men to the paymaster of the regiment, battalion, or corps, in which such men shall be then serving, who shall forthwith pay or account to the said men respectively for the same. *s.* 124.

Balloted men continuing their service beyond five years, to have one guinea.

And in case the term of service of any person who shall have been chosen by lot, and enrolled to serve in the militia, shall be prolonged in the manner herein directed beyond the term of five years, in such case the receiver general shall pay to the captain or other commanding officer of each company, one guinea for every person whose time of service shall be so prolonged, and shall in like manner, so often as the term of service of any person so chosen by lot and enrolled to serve in the militia shall be prolonged as aforesaid, pay the like further sum of one guinea, (all which money so paid by the receiver

general shall be allowed him in his account), and the money so received by any captain or commanding officer, or so much thereof as he shall think proper, shall be laid out in the manner he shall think most advantageous for such balloted person whose time of service shall be prolonged as aforesaid; and such captain or commanding officer shall on or before the 24th day of the month next ensuing that in which he shall have received any such guinea, account for the same, and shall pay over to him the remainder of the said money, if any, which shall not have been so applied and disposed of. *s.* 125.

A like bounty to substitutes or volunteers whose term shall be so prolonged.

And in case the term of service of any substitute, hired man, or volunteer, shall, by reason of the militia being embodied, continue beyond the term of five years, such receiver general shall pay the captain or other commanding officer of each company one guinea for every substitute, hired man, or volunteer, whose term of service shall so continue; and in case such term shall so continue for more than three years beyond the said term of five years, then at the expiration of the said three years, the said receiver general shall pay the like further sum of one guinea, for every such person, and shall in like manner, at the expiration of every additional term of three years, pay the like further sum of one guinea for every such person, to be laid out and accounted for as aforesaid. *s.* 126.

Persons sworn and inrolled, not joining the regiment, or deserting.

If any person sworn and enrolled, either as a substitute or volunteer (not labouring under any infirmity incapacitating him to serve), shall not with due diligence join the regiment, battalion, or corps (in case the same shall then be embodied), according to such order as shall be given him by the lieutenant or deputy lieutenants, or by any officer of the corps, or by any other person authorized to give such order, or if any person serving in any embodied militia as a substitute or volunteer, or any serjeant, corporal, or drummer, shall desert or absent himself from duty, such serjeant, corporal, drummer, or private man, shall be liable to be apprehended, and punished, according to any act for the punishing mutiny and desertion, and of the articles of war, and may, by a general court-martial, be adjudged to further service in the militia for some period to be limited, or to service in the other forces, without limitation as to the period or place of service, as the court martial shall direct; and in case the said court shall adjudge such militia man to serve in the other forces, and such sentence shall be approved by his majesty, it shall be lawful by order under the hand of the secretary at war, or his deputy, to cause such man, if found fit for service, on examination by a surgeon of the other forces, to be entered as a private soldier, to serve in such regiment as shall be directed in such order, or for general service, and to be forthwith conveyed either to the head quarters of the regiment in which he shall be entered, or to the head quarters for recruits belonging to his majesty's regiments on foreign sta-

tions; and such substitute or volunteer shall, from the time of his being delivered over to be so conveyed, be subject to the penalties and punishments contained in any act for punishing mutiny and desertion. *s.* 127.

Vacancies by desertion or absence, to be filled up by a fresh ballot.

Whenever the whole number of persons enrolled for any place shall have been ordered to be drawn out and embodied, in case any of the, persons so ordered shall make default, either by not appearing, or by desertion or absence from duty, and such person shall not be taken within three months, then a vacancy shall be declared by the deputy lieutenants at their first meeting to be holden for the subdivision, next after the receipt of the certificate of such default, desertion, or absence, under the hand of the officer commanding the corps, and the vacancy shall be forthwith filled up by a fresh ballot. *s.* 128.

Lieutenants to issue their orders to the clerks of the subdivisions to make out lists of the men inrolled.

The lieutenant of every county, or (in case of vacancy, or in the absence of the lieutenant) three deputy lieutenants, to whom any order of his majesty for the purpose of embodying the said militia, or a proportion thereof, shall have been directed, shall, as soon after as conveniently may be, issue their order to the clerks of the subdivision meetings, to make out a list containing the names of all persons enrolled within each subdivision, and arranged according to their classes as before mentioned, before a day to be specified in the said order, not later than three days after the date of such order, and the said clerks shall within the time fixed by such order make out such lists and also two duplicates thereof, one of which shall be for the use of the deputy lieutenants at their subdivision meetings, and the other shall be transmitted to the clerk of the general meetings, for the use of the lieutenant or deputy lieutenants. *s.* 129.

And also issue orders for assembling the men.

And the said lieutenant or deputy lieutenants shall, at the time of issuing the order before mentioned, also issue their order for assembling all the men within their subdivisions, or at such place within their counties, and in such proportions as to the said lieutenant or deputy lieutenants shall appear most expedient, on the day specified in such order, to the chief constable or other officers of the hundreds or other divisions, with direction immediately to issue precepts conformable thereto to the constables, or other officers of the several parishes and places within the said hundreds and divisions; and such constables or other officers, are upon receipt thereof, forthwith to cause notice in writing to be given to the several men, or left at their abode, to attend within their respective subdivisions, at the time and place mentioned in such order, and shall also cause a like notice to be affixed on the doors of the churches or chapels belonging to their parishes, or (if any place shall have no church or chapel) on the door of the church or chapel of some parish or place adjoining, which notice shall be deem-

ed a sufficient notice to every person enrolled, notwithstanding any omission in the delivery of written notices in manner herein directed; and all such militia men shall duly attend at the time and place appointed, *s.* 130.

Penalty on persons not appearing.

If any person of the said militia, not labouring under any infirmity incapacitating him to serve, shall not appear in pursuance of such order, or appearing, shall not abide the orders of the deputy lieutenants, such person shall be deemed a deserter, and if not taken previously to the completion of the ballot, shall forfeit 10*l.* and shall be deemed to be a person liable to be embodied, and to serve according to the directions herein contained, over and above the number to be chosen by ballot, *s.* 131.

Lieutenants are also to appoint the first subdivision meeting for ballotting for a proportion of the men.

The said lieutenant or deputy lieutenants of every county, or three of them, shall appoint the first meeting to be holden by the several deputy lieutenants, within their subdivisions, or at such other places as shall have been appointed on the day mentioned in such order for assembling the men in order to their being chosen or ballotted to serve according to this act, and shall also appoint the time and place of assembling such of the said men as shall be so chosen or ballotted within their counties, in order to their being embodied; of which appointments the deputy lieutenants shall have notice; and all the men enrolled on the list of every such subdivision, and appearing in pursuance of such order on the day appointed, shall be then mustered by the deputy lieutenants, and the deputy lieutenants shall at such meeting proceed in the manner by this act directed, to cause a number of the men so appearing, to be chosen or ballotted for, according to the directions of this act equal, to such proportion of the complete number that had been or ought to be enrolled on the list of such subdivision, as shall be specified in his majesty's order for drawing out and embodying any part of the militia, and to cause the names of all the persons chosen, to be marked on the list of such subdivision; and when the choice shall be concluded, the said deputy lieutenants shall cause the list of such subdivision to be publicly called; and as the name of each person shall be read, shall declare whether such person is or is not ballotted out of such list in manner so provided; and the names of all the persons before ballotted shall be returned to the lieutenant of the county, or to the deputy lieutenants who shall have given such order; and the person so ballotted shall be embodied to serve according to this act; and the said deputy lieutenants shall openly declare to the men ballotted, the time and place of their assembling, in order to their being embodied; and all persons declared to be so ballotted, shall immediately repair to, and attend at the time and place appointed, in order to their being embodied; and all such persons shall be discharged from further attendance in pursuance of such order. *s.* 132.

But the deputy lieutenants, in their subdivision meetings, and before they proceed to choose or ballot as before directed, may correct the names of the men contained in such classes, according to the changes that may have taken place since the last correction thereof. *s.* 133.

And deputy lieutenants may correct the classes.

Whenever his majesty shall think fit to draw out and embody a part only of the militia of any county, the deputy lieutenants in their subdivisions shall, before they proceed to ballot for the private men who are to form such part, examine the classes, and in every case in which the proportion of the militia required to be called out, shall equal the number of men contained in such first, or first and second, or other succeeding classes, then the men contained in such classes shall be chosen without any ballot; and when the proportion of men required shall be less than the number contained in such first class, then such proportion shall be ballotted for out of such class only, and no other; and when the proportion shall exceed the number contained in the first, or first and any succeeding class, the deputy lieutenants shall first choose all the men in such first class, or first and next succeeding class, until such proportion may be as near as may be completed, and shall then proceed to ballot in manner directed by this act for the remainder of the proportion, out of the class immediately following the last that shall have been wholly taken towards making up such proportion, and the deputy lieutenants shall proceed in like manner for the supplying of any further proportion of militia, in case any further part should be afterwards ordered to be embodied, and shall during the whole of the time that a part only of the militia shall remain embodied, supply all vacancies, as they shall arise, in such part out of the classes as they stand in succession, and shall in no case proceed to ballot for the supplying of any vacancy out of any class, until all the men contained in the preceding class, who shall be able to join such militia, shall have been chosen. *s.* 134.

Mode of balloting when only a part is to be embodied.

Whenever the militia, or any part of the militia of any county, shall have been ordered to be drawn out and embodied; in case any of the persons enrolled in any subdivision shall make default either by not appearing, or by desertion or absence, and such person shall not be taken within three months from the time of default, then a vacancy shall be declared by the deputy lieutenants, at their first meeting for the subdivision, next after the receipt of the certificate of such default, under the hands of the officer commanding the corps to which such person belonged, and the vacancy shall be forthwith filled up by a fresh ballot within the subdivision. *s.* 135.

Where militia-men are absent more than 3 months, a fresh ballot to take place.

If any person enrolled, and not chosen or balloted as aforesaid, who shall not have any child living under the age of fourteen years, and who shall not be more than thirty-five years of age, shall offer himself as a volunteer, to be embodied in the

Volunteers may be accepted.

room of any person chosen or balloted, the deputy lieutenants at any meeting may accept such volunteer in the room of such person so chosen or ballotted, who shall serve as if he had himself had been ballotted. *s.* 136.

Men attending the ballot, and not chosen to be paid 1s. per day.

Every man of the said militia who shall attend at the ballot, and who shall not be chosen or ballotted, shall be entitled to 1*s. per diem*, during the time he shall be necessarily employed from home, in going to, and continuing at, and returning from the place to be appointed for such ballot, not to exceed three days, to be paid by the clerk of the subdivision; and on the certificate of the number of men so paid under the hands of such deputy lieutenants and justices of the peace, or where no deputy lieutenant shall there attend, then of any one justice of the peace, the receiver-general of the county shall reimburse to the said clerk the sums so paid out of the land tax. *s.* 137.

Subdivision clerks to draw upon the receiver-general for allowances

The respective clerks of the subdivision or other meetings shall be empowered to draw on the receiver general of the land tax for such sums as such deputy lieutenants and justices, or where no deputy lieutenant shall attend, as one justice shall, by any order under their or his hands direct, which sums shall be applied by such clerks for paying the allowances before directed to be made; and the receipt of such clerk, together with such order, shall be to the receiver-general a sufficient discharge. *s.* 138.

Clerks to make out accounts of monies received and paid.

The clerk of each subdivision or other meeting shall, when required by such deputy lieutenants and justices, or where no deputy lieutenant shall attend, then by one justice, make out an account of the sums by him received and paid, to be by them examined, allowed, and signed; which shall be the proper voucher and acquittal of such clerk. *s.* 139.

Remainder of the militia may be embodied.

Nothing herein shall debar his majesty from ordering the remainder of the militia, or so many of the remainder as his majesty shall think proper, to be drawn out and embodied whenever occasion shall require. *s.* 140.

When the remainder is embodied, the directions of this act to be pursued

Whenever his majesty shall think fit to draw out and embody any further proportion of the militia, the lieutenant of the county, or three deputy lieutenants, are to cause such further proportion to be drawn out and embodied, and in so doing shall pursue the directions herein prescribed for embodying the first proportion. *s.* 141.

When part only is embodied, the remainder may be mustered, trained, and exercised.

If during such time as any part of the militia shall continue embodied, his majesty shall deem it expedient that the militia of any county, or part thereof, which shall not at such time be actually embodied, should be drawn out, in order to be mustered, trained, and exercised, for a limited time, instead of being embodied, his majesty may direct the lieutenants or deputy lieutenants to cause the said militia, or any part thereof, to be drawn out, in order to be mustered, trained, and exercised. *s.* 142.

Whenever the whole of the militia of any county is ordered to be embodied, all the officers, non-commissioned officers, and drummers of every regiment, battalion or corps, shall immediately join the corps to which they belong, at the time and place appointed; and whenever the militia is called out and embodied by detachments, under any order of his majesty, his majesty may order the proportion and description of officers, non-commissioned officers, and drummers, who shall accompany such detachments, and the establishments of such detachments, and also regulate the numbers and duties of all such officers, serjeants, corporals, and drummers, as shall remain within any such county, for the mustering, training, and exercising of the remainder of the private men. *s.* 143.

When the whole is embodied, all officers, non-commissioned officers, and drummers shall join.

It shall be lawful for his majesty from time to time, as he shall think fit, to disembody any part of the militia of any county, and again embody any such militia so disembodied, or any proportion thereof, according to the provisions of this act. *s.* 144.

The king may disembody and embody the militia as he thinks fit.

When the militia, or part, having been so drawn out into actual service, shall be again disembodied, and the officers and men dismissed, the officers, non-commissioned officers, drummers, and private men, shall be subject to the same orders only, as they were subject to under the provisions of this act, before they were drawn out into actual service. *s.* 145.

When disembodied, to be put on the same footing as before.

## *XII. Supplementary Militia.*

*In all cases of actual invasion, or of imminent danger thereof, and in case of rebellion*, it shall be lawful for his majesty (the occasion being first communicated to parliament, if then sitting, or declared in council and notified by proclamation, if no parliament shall be sitting), to order by proclamation, that in addition to the number of men required by this act, to be raised by the several counties, there shall be forthwith raised and enrolled in the said several counties, and places, any number of men not exceeding the proportion of one half of the whole number required by this act, to be raised by each county, and place; and the lieutenants and deputy lieutenants shall, immediately on the issuing of any such proclamation, assemble and forthwith proceed to apportion the number of men in their counties, among the several hundreds, or other divisions, and also among the several parishes, or places, therein; and shall proceed to raise and enrol such men, at such time as shall be specified in such proclamation. *s.* 146.

In cases of invasion or danger thereof the king may exercise the militia.

And all the powers, provisions, regulations, rules, penalties, forfeitures, bounties, allowances, clauses, matters, and things, in this act contained, relative to the militia, shall be

applied for the raising, embodying, and calling out into actual service the supplementary militia so ordered to be raised and enrolled. *s.* 146.

Parliament to be called together when supplementary militia is raised.

And whenever his majesty shall cause the supplementary militia to be raised and enrolled, or drawn out and embodied as aforesaid, if the parliament shall not be to meet within fourteen days, his majesty may issue a proclamation for the meeting of parliament within fourteen days. *s.* 147.

How supplementary militia may be disembodied.

It shall be lawful for his majesty (whenever he shall deem it expedient to reduce the whole, or any part of the supplementary militia), by royal proclamation to declare such reduction; and in case the said supplementary militia, or any part thereof, shall be then embodied, to disembody the same, or any number of men equal thereto, without regard to whether they were enrolled in pursuance of any proclamation for raising the supplementary militia, or were enrolled before, and the men so disembodied, or so many of them as may have been enrolled and not embodied, shall remain liable to serve for the periods for which they shall have been enrolled to serve, and shall, during such periods, supply all the vacancies that may arise in the parishes, or united parishes, for which they shall have been enrolled, whenever called upon. *s.* 158.

And the deputy lieutenants of the subdivisions shall cause any man that may be required for supplying any vacancy in the established militia, to be taken from their classes, or ballotted as the case may require, according to this act, relating to the taking men for the militia from classes, until all the men remaining liable, and that shall be fit to serve, shall have supplied such vacancies. *s.* 48.

No ballot to take place while vacancies can be supplied from them.

But no ballot shall take place for the raising and enrolling any man to supply any vacancy, so long as the same can be supplied from any men then enrolled for the parish or place that shall remain liable and be fit to serve: also, no man so remaining liable to serve shall be called upon to supply any vacancy arising for any other parish, than that for which he shall be originally enrolled. *s.* 148.

But they shall supply vacancies only for the place where they are inrolled.

Also, no such man so remaining liable to supply such vacancy shall be capable of being enlisted into the regular forces. *s.* 148.

## *XIV. Relief for the families of militia men when drawn into actual service.*

Non-commissioned officers, &c. leaving families.

And if any non-commissioned officer or drummer, ballotted man or substitute, hired man or volunteer, shall, when embodied and called out into actual service, leave a family unable to support themselves, the overseers of the poor of the parish, where

the family of such person shall dwell, shall, by order* of one justice, pay to such family, out of the poor rates for such parish,

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* As these orders for the relief of the families of militia men, do not in substance differ from those which the poor laws direct in respect of other poor and impotent persons, the same course of proceeding should be observed in both.

And the stat. 9 *Geo.* 1. *c.* 7. *s.* 1, enacts generally that "no "justice shall order relief to any poor person until oath be "made before him of some matter, which he shall judge to be "a reasonable cause for having such relief; and that the same "person hath applied at some vestry, or to two overseers, and "been refused to be relieved—nor until such justice hath sum- "moned two of the overseers to shew cause why relief should "not be given."

An oath from the party applying for relief, and a previous summons of the overseers, appear therefore to be requisite before these orders are made, and such oath and summons may be agreeable to the following forms:

THE OATH.

M W, *now residing at* ——— *in the parish of* ——— *in the county of* ——, *maketh oath and saith, that she is the wife of* M W, *of the same place, weaver, a person duly chosen by ballot to serve, and now accordingly serving in the militia of the said county, which said militia is embodied and called out into actual service and ordered to march, and that she the said* M W *is unable to support herself and infant children, that is to say,* A *her son by the said* M W *aged* —— *years, and* C *her daughter by the said* M W *aged* —— *years.* M W

*Sworn before me, one of his majesty's justices of the peace in and for the said county, this* ——— *day of* ——— } J. P.

SUMMONS.

Monmouth-shire. } To the constable of ———

*Whereas oath hath this day been made before me* J P, *esq. one &c.* [here state the oath in the same manner as in the following orders.] *These are therefore to require you in his majesty's name, to summon two of the overseers of the poor of the said parish of* —— *to personally be and ap-*

tything, or township, a weekly allowance, according to the or,

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*appear before me on ——— the ——— day of ———, at the house of ———, in ———, in the county aforesaid, at the hour of ——— in the ———noon of the same day, to shew cause why relief should not be given unto the said* M W *according to the statute in that behalf made and provided, and be you then and there present to certify what you shall have done in the execution of this precept. Given under my hand and seal the ——— day of ———*

The form of the order for the relief of the family of a militia man serving for himself.

Monmouthshire to wit. } To the overseers of the poor of the parish of ——— in the said county, and to every of them.

*Whereas oath hath been made before me* J P, *esq. one of his majesty's justices of the peace in and for the said county of* M, *by* M W, *now dwelling in your said parish, that she is the wife of* M W *of your parish, weaver, a person duly chosen by ballot to serve, and now accordingly serving in the militia of the said county,* * (*which said militia is embodied and called out into actual service, and ordered to march*) *and that she the said* M W *is unable to support herself and her infant children, that is to say,* A *her son by the said* M W *aged three years, and* C *her daughter by the said* M W *aged five years. And whereas the overseers of the poor of the said parish of ——— have been duly summoned by me to shew cause why relief should not be given to the said* M W, *according to the statute in that behalf made; and they the said overseers have appeared before me in pursuance of my said summons, but have not shewn any sufficient cause to the contrary* [or *have neglected to appear before me in pursuance of the said summons*]. *I do therefore in pursuance of the statute in that behalf made and provided, hereby order you the said overseers, and every of you, to pay out of the rates made for the relief of the said poor of your said parish, unto the said* M W *weekly, and every week, upon the* Monday *in each week, the sum of ———, for and towards the support of herself and the said children, being the usual and ordinary price of ——— days labour in husbandry, within the said county, which said weekly allowance is to be forthwith reimbursed to you by the treasurer of the said county out of the public stock of the said county; and the said treasurer is hereby required to reimburse the same accordingly. Given under my hand and seal the ——— day of ——— in the year of our Lord ———.*

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* *Or that she is the wife of* M M, *a corporal, drummer, or fifer,* (as the case is) *now serving in the militia, &c.*

dinary price of labour in husbandry within the county, by the following rule; that is to say, not exceeding the price of one day's labour, nor less than 1*s*. for every child born in wedlock, and under ten years; and for the wife whether he shall or shall not have any child not exceeding the price of one day's labour, nor less than 1*s*.: And in every parish, where the money arising by such rates shall not be sufficient, a new rate shall be made. 43 *Geo*. 3. *c*. 47. *s*. 2.

And it shall be lawful for the justices at any *Michaelmas* general quarter sessions, to settle the rate of allowance to be paid to the families of militia men resident within such county, and such rate shall be binding upon all justices until any new rate shall be settled. 43 *Geo*. 3. *c*. 47. *s*. 3.

Justices may regulate the rate of allowance.

But no allowance shall be ordered or paid under this act, to the wife or family of any militia man, until he shall have joined the corps to which he belongs, or for any longer period than such person shall continue to serve and remain embodied in actual service, nor in any case in which the wife, shall follow the regiment, or shall leave her child or children, or depart from her home, unless under certificate of any neighbouring justice, or the overseer of the parish in which such relief shall be given authorizing such departure for a time specified therein for the purposes of harvest, or obtaining by work a better support for her family, or unless for the purpose of going to reside, and resid-

No allowance to be made to the wife or family of any person till he shall have joined his corps.

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Form of an order for the relief of the family of a substitute.

Monmouthshire, to wit. } To the overseers of the poor of the parish of ——, in the said county, and to every of them.

*Whereas oath hath been made before me* J P, *esq. one of his majesty's justices of the peace in and for the said county of* M, *by* M W, *now dwelling in your parish, that she is the wife of* M W, *of* ———, *a private militia man, now serving in the militia of the said county as a substitute for* B M, *of your said parish*, [*or, for the parish of* ———, specifying it if he serves for another parish] *weaver*, (*which said militia is embodied and called out into actual service and ordered to march*,) *and that she the said* M W *is unable to support herself and infant child, that is to say*, A *her daughter, by the said* M W, *aged two years. And whereas the overseers of the poor of the said parish of* ——— *have been duly summoned*, &c. [Here state the summons as in former precedent.] *I do therefore hereby order you the said overseers of the poor of the said parish to pay unto the said* M W *the sum of* ——— *weekly, and every week, upon the* Monday *in each week, for and towards the support of herself and the said* A *her daughter*,

ing in the parish, for which her husband shall serve, in case at the time of her husband being called out into actual service, she shall be residing in any other parish. 43 *Geo.* 3. *c.* 47. *s.* 4.

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*until such time as you shall be otherwise ordered according to law to forbear the said allowance.*

And if the substitute serves for another parish than that in which his family resides, here add, *Which said weekly allowance is to be reimbursed to you by the said overseers of the parish of* —— *aforesaid, who are hereby directed to reimburse the same accordingly. Given under my hand and seal the* —— *day of* ——, *in the year of our Lord* ——.

And where the substitute serves for a parish in another county, the order may run thus.

Monmouthshire, to wit. } To the overseers of the poor of the parish of —— in the said county, and to every of them.

*Whereas oath hath been made before me* J P, *esq. one of his majesty's justices of the peace in and for the said county of* M, *by* M W, *now dwelling in your said parish, that she is the wife of* M W *of* ——, *a private militia man serving in the militia of the county of* G, *as a substitute for* B M *of the parish of* ——, *in the said county of* G, *(which said militia is embodied and called out into actual service, and ordered to march) and that she the said* M W *is not able to support and maintain herself. And whereas the said overseers of the poor of the said parish of* —— *have been duly summoned by me, to shew cause why relief should not be given to the said* M W; *and having appeared before me in pursuance of such summons, and not shewn any sufficient cause to the contrary* [*or having neglected to appear before me in pursuance of such summons,* as the case is]. *I do order that you the said overseers of the poor of the parish of* —— *aforesaid do pay unto the said* M W *the sum of* —— *weekly, and every week, upon the* Monday *in each week, for and towards her support and maintenance, until you shall be otherwise ordered according to law to forbear such allowance; which said weekly allowance is to be reimbursed to you by the treasurer of the said county of* M, *on your producing to him my certificate of this order; and the said treasurer is to transmit such certificate, and also an account of all monies so repaid by him from time to time quarterly, to the treasurer of the said county of* G; *which said treasurer of the said county of* G *is forthwith to reimburse the same to the said treasurer of the said county of* M. *Given under my hand and seal the* —— *day of* ——, *in the year of our Lord* ——.

Also, no allowance shall be ordered or paid to the family of any militia man, who shall at the time of his inrolment have fraudulently declared, that he had no wife or family, or to any man, having more than one child at the time of his enrolment, who shall have falsely declared at the time of such enrolment that he had only one child: where the militia man, to whom any such family shall belong, shall undertake and make provision for the maintenance of his other children, to the satisfaction of any justice to whom any application shall be made for the relief of such family, it shall be lawful for such justice to order the allowance under this act to be paid in respect of the wife of such militia man and one child of such family under the age of ten years. 43 *Geo.* 3. *c.* 47. *s.* 5.

No allowance, where any militia-man shall have falsely declared that he had no wife or family;

Also no allowance under this act shall be paid to the family of any non-commissioned officer or drummer, reduced for misconduct to the condition of a private man, such reduction being certified by the commanding officer or adjutant to the clerk of the general meetings, and by him to the treasurer of the county, and by such treasurer to the overseers of the poor, and every such allowance shall cease from the time of such reduction being so certified to the overseers, and be no longer payable, notwithstanding any order of any justice to the contrary; and every such family requiring relief, shall, after that time, be relieved as casual poor only. 43 *Geo.* 3. *c.* 47. *s.* 6.

nor to the family of any non-commissioned officer or drummer reduced for misconduct;

Also, no allowance shall be given to the family of any substitute, hired man, or volunteer, who shall marry after called out into actual service, unless such marriage shall have taken place with the consent of the colonel or commanding officer, and such consent shall have been certified under the hand of such officer. 43 *Geo.* 3. *c.* 47. *s.* 7.

Nor to the family of any substitute, hired man, or volunteer, who shall marry after being called out into actual service, without the consent of the commanding officer.

The families of non-commissioned officers, drummers, or ballotted men, or of substitutes, hired men, or volunteers, shall not be removeable to any workhouse or poorhouse by reason of receiving such allowances; nor shall any persons, to whose fami-

Families not to be sent to any work-house, &c.

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The form of the certificate referred to in the preceding order.

Monmouthshire, to wit. } *I J P, esq. one of his majesty's justices of the peace in and for the said county of* M, *do hereby certify, that I have this day made an order upon the overseers of the poor of the parish of —— in the said county to pay the sum of ——— weekly, and every week, unto* M W, *now dwelling in the said parish, wife of* M W, *a private militia man now serving in the militia of the county of* G, *as a substitute for* B M, *of the parish of* ——, *in the said county of* G. *Given under my hand and seal the* ——— *day of* ——— *in the year of our Lord* ———.

lies any such allowances shall be paid, be thereby deprived of their legal settlements elsewhere, or of their right of voting for the election of members to serve in parliament. 43 *Geo.* 3. *c.* 47. *s.* 8.

Allowances to non commissioned officers and drummers to be repaid the overseers of the poor by the county treasurer.

And every such weekly allowance to the family of any non-commissioned officer or drummer, shall be repaid to the overseer of the poor of the parish, in which such family was relieved, by the treasurer of the county, in which such parish is situated, out of the public stock thereof; and every such weekly allowance which shall be so paid to the family of any non-commissioned officer or drummer in any other county than that for which such non-commissioned officer or drummer shall serve, or to the family of any private man in any other parish than the one for which such man shall serve, shall be reimbursed, in the manner herein-after mentioned. 43 *Geo.* 3. *c.* 47. *s.* 9.

Relief to families of non-commissioned officers and drummers to be apportioned.

But in all cases where a certain number of private militia men are directed to be raised for any county, together with or including any city, borough, town, or place, being a county or district of itself, not contributing to the general county rate, the several sums raised for the relief of the families of non-commissioned officers and drummers, shall be divided and apportioned between and borne by such county, city, and borough, town or place, in such proportions as the respective numbers of men, apportioned to be raised in such county, and by such city, borough, town, and place respectively, bear to each other. 43 *Geo.* 3. *c.* 47. *s.* 10.

Treasurers to demand and pay such proportions to one another.

And the treasurers are to demand, receive, and make payment of such proportions, the one to the other of them, as the case may require. 43 *Geo.* 3. *c.* 47. *s.* 11.

Disputes to be settled by the lord lieutenant or three deputy lieutenants.

And if any dispute shall arise as to the proportion to be paid or any other matter relating thereto, or to such payments, the lord lieutenant of the county, and in his absence three deputy lieutenants at any meeting, may adjust the same, whose decision shall be final; and the lord lieutenant and deputy lieutenants, are to call for, and inspect, the accounts of every such treasurer, for the purpose of adjusting their said proportion. 43 *Geo.* 3. *c.* 47. *s.* 12.

Justices may appoint treasurers, where there are none.

And in all such cities, towns, liberties, divisions, and places, which do not contribute to the general county rates, and where no treasurer is yet appointed, the justices for every such city or place, in case there are any, and if not, then the justices of the county wherein such city or place shall be, shall at their general quarter-sessions, appoint a treasurer; and from time to time to assess upon every parish, within the liberties of such cities, in such proportions as the poor rates have usually been assessed, and shall cause to be paid, out of such poor rates to such treasurer, such sums as shall, in their discretion, be necessary for the purposes of this act; and such treasurer shall pay the same accordingly, and shall act herein in the same manner as the trea-

surers of peculiar districts where a public stock is now raised. 43 *Geo.* 3. *c.* 47. *s.* 13.

Militia-man's family residing in a different county than that for which he serves.

And in every case where any allowance under this act shall be paid to the family of any private militia man in any other parish, than that for which such private shall serve, the justice who shall make any order for the relief of such family, may certify the same under his hand, and in such certificate direct the overseers of the parish, tything, or township for which such private militia man shall serve, to reimburse the money so paid to the overseers who shall have advanced the same in pursuance of such order. 43 *Geo.* 3. *c.* 47. *s.* 14.*

Allowances to be demanded from the treasurer.

But where by reason of the distance of any parish, in which such allowance shall be so paid to the family of any private serving for any other parish, from such other parish, where the same shall be situate in any other county, the overseers entitled to the repayment of such allowances, under any such order or certificate, cannot conveniently procure the repayment thereof from the overseers of the parish, for which such private shall have served, it shall be lawful for such overseers to demand repayment of such allowances from the treasurer of the county, in which the parish, where such allowances shall have been paid, shall be situate; and such treasurer shall, upon production of such order and certificate, forthwith reimburse such allowances to the overseers demanding the same. 43 *Geo.* 3. *c.* 47. *s.* 15.

And every such treasurer, who shall reimburse to such overseers, any sums in pursuance of this act, on account of such weekly allowance paid to the family of any non-commissioned officer or drummer, or any private militia man serving in the militia of any other county, shall deliver or transmit an account of such money so reimbursed, signed by one justice for the county, where such family shall dwell, to the treasurer of the county, in the militia whereof such non-commissioned officer, drummer, or private shall serve; and thereupon the treasurer to whom such account shall have been delivered or transmitted, shall pay to the treasurer, who shall have so delivered or transmitted such account, the sums by him reimbursed to such overseers. 43 *Geo.* 3. *c.* 47. *s.* 16.

Account of allowances to be transmitted to the justices.

And every treasurer who shall repay to any treasurer of any other county, any such allowances, on any such signed account, shall transmit the same, and also an account of all monies re-

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* This certificate for reimbursement, must be made *by the same magistrate and at the same time*, as the first order of maintenance.

And it seems that if the substitute be sworn and actually serve, his family are entitled to be relieved, though he were not previously approved by two deputy lieutenants or inrolled. *Rex* v. *Ledbury, Ea.* 38 *Geo.* 3. 7 *Term Rep.* 558.

paid by him in pursuance thereof, to the justices for the county, at the next or general quarter sessions of the peace, or any subsequent sessions; which accounts shall be allowed by the justices, who shall make orders for the overseers of the poor of the respective parishes, for which such private militia man shall serve, to pay the same to the treasurer of such county, out of the poor rates of such respective parishes, within fourteen days next after the receipt of such orders. 43 *Geo.* 3. *c.* 47. *s.* 17.

Accounts of allowances to be reimbursed under this act, shall be signed by the justices.

But accounts of all allowances paid under this act, in respect whereof any reimbursement shall be directed by this act, shall be made up at the end of every successive six months, or shorter period, from the time of the first commencing the payment thereof, and shall be signed by the justices granting certificates for the reimbursement thereof, or by some other justices of the same county, within one month after the periods up to which such accounts shall be made up; and the money due on such account shall, as soon as the same can be done, be demanded of the overseers of the parish, or treasurers, required to make such reimbursement; and no such sum of money shall be demanded, unless the same shall have been so first certified within one month as aforesaid, and delivered to such overseer or treasurer, by whom such reimbursement is to be paid, within three months after such certifying thereof. 43 *Geo.* 3. *c.* 47. *s.* 21.

Militia men leaving families that become chargeable.

And in every case in which the family of any private militia man, when called out and embodied for actual service, shall become chargeable in respect of any greater number than the wife and three children respectively under the ages of ten years, it shall be lawful for the overseers of the parish, for which such man shall serve, or in which the family shall reside, to provide another fit and able man between the ages of 18 and 35 years, and having no wife, or any child under the age of 10 years, to serve in the stead of the man having such family as aforesaid; and the colonel or commanding officer, upon such other man being duly examined, approved of, and enrolled, and joining at the head quarters of the regiment or battalion, shall discharge the man in whose stead such other person shall be so produced and enrolled: but the pay of every such person so provided as aforesaid, shall commence and be drawn only from the day of the discharge of the man in whose stead he shall have been provided; and no such private militia man shall be discharged at any other period of the year, than between the 1st day of *November* and the 25th day of *March*. 43 *Geo.* 3. *c.* 47. *s.* 22.

Payments made by overseers under this act shall be allowed as other expences on ac-

And all payments made by any overseer in pursuance of any order or certificate of any justice, shall be allowed in their accounts, and if any overseer shall, on demand made in pursuance of any order or certificate of any justice, refuse or neglect to pay money directed to be paid by such order or certificate,

such overseer shall forfeit 5l. to be recovered upon the oath of one witness, or by the confession of the party accused, before the justice making such order, or any other justice of the county; which justice is, upon any information exhibited or complaint made in that behalf, to summon the party accused, and to examine into the matter of fact, and upon due proof thereof as aforesaid, to give judgment for such penalty, to be levied by distress and sale of the offender's goods and chattels, in case the same shall not be forthwith paid, by warrant under the hand and seal of such justice; causing the overplus (if any) after deducting the charges of such distress and sale, to be rendered to the party; and the penalty so adjudged shall be paid, one moiety thereof to the informer, and the other moiety to the poor of the parish, to the overseers of which any such sum ought to have been paid. 43 *Geo.* 3. *c.* 47. *s.* 23.

count of the militia.

Penalty on overseers neglecting.

Application of penalty.

Act to extend to all places having separate overseers, and to places united for the purpose of ballotting for men.

And all the provisions in this act relating to the allowances to the families of any persons serving in the militia for any parish, or any united parishes, and for the reimbursement of all sums which shall be advanced under any of the provisions of this act, shall extend to all hamlets, vills, and places having separate overseers of the poor, and maintaining the poor thereof separately, and also to all parishes united for the purposes of ballotting for militia men, as well as to all other parishes. 43 *Geo.* 3. *c.* 47. *s.* 24.

And the justices who shall make orders for the relief of any such families, or any other justice of the same county, shall give directions for the reimbursement of the money to be advanced for such purpose by the overseers of the poor of the parish or united parishes, which ought to reimburse the same, or to contribute to the reimbursement thereof. 43 *Geo.* 3. *c.* 47. *s.* 24.

And the treasurers of the several counties, ridings, and places, and the justices of the several counties and places within which every such parish shall be, shall make reimbursement and direct reimbursement to be made by such parishes respectively, in the same manner as by this act is provided with respect to parishes therein described. 43 *Geo.* 3. *c.* 47. *s.* 24.

Justices shall ascertain what proportions shall be contributed.

And where any man shall serve for any united parishes, or for any parish comprizing more than one township, which shall have separate overseers of the poor, all such justices as aforesaid, shall ascertain in what proportions such united parishes, or such several townships comprized within the same parish (for which any such man, whose family shall be so relieved, shall serve), ought to contribute to such relief, such proportions to be ascertained according to the numbers of men liable to be ballotted for the militia, which each of such united parishes, or each of such townships, as the case may be, shall appear to have had by the last returns made for that purpose; and such justices shall make orders for the reimbursement of

such advances, in such several proportions so to be ascertained, and from time to time as occasion shall require. 43 *Geo.* 3. *c.* 47. *s.* 24.

And in order to enable such justices to ascertain such proportions, the clerks of the several subdivision meetings shall, when thereunto required, certify, by writing under their hands, the number of men so liable to be ballotted for, according to the returns made for each of such parishes or places, for which certificate there shall be paid a fee of 1s. 43 *Geo.* 3. *c.* 47. *s.* 24.

Adjutants, &c. to make monthly returns to the clerks of the subdivision meetings, of certain particulars.

And the adjutant of every regiment, battalion, or corps of militia, or where there shall be no adjutant, the serjeant major thereof, shall within 7 days after the 24th day of every month, during the time of the militia remaining embodied or in actual service, return to the clerks of the subdivision meetings a particular list of all promotions and vacancies, and all deaths, desertions, and other casualties that shall have occurred among the private men, in the calendar month preceding each 24th day as aforesaid; and shall specify the christian and surname of each man so returned, and whether ballotted man, substitute, land man, or volunteer, and the parish for which he was serving; and such clerks of the subdivision meetings shall within fourteen days after the receipt of such return, transmit proper extracts thereof to the overseers of the poor of the parishes for which any such man shall have been serving. 43 *Geo.* 3. *c.* 47. *s.* 25.

Appeal.

If any person shall find himself aggrieved by any order of any justice or justices of the peace, for the payment of any such money as aforesaid, such person may appeal to the justices at the next general or quarter sessions of the peace, who are to hear and finally determine the same; and the said justices at such sessions may award and order, where they see occasion, the payment of such sum of money, which such appellant as churchwardens or overseers ought to have paid, and hath neglected to pay. 43 *Geo.* 3. *c.* 47. *s.* 24.

Sessions may order a recompence to county treasurers out of county stock.

And the justices of the peace, at any general quarter sessions, may order and direct such recompence and satisfaction as they shall think reasonable to be made to the treasurers for their extraordinary trouble, labour and expences, while the militia is embodied and in actual service, for such time and in such manner as they shall think proper, to be paid or allowed out of the public stock of the county. 43 *Geo.* 3. *c.* 47. *s.* 27.

### *XV. Raising the militia within particular places.*

Berwick upon Tweed.

All powers by this act, with respect to *Northumberland*, shall extend to *Berwick upon Tweed*, and the liberties thereof (except only where by this act otherwise provided for); and out of the persons returned in the list for *Berwick upon Tweed*, a

number shall be chosen by ballot to serve for the said town, in proportion with the privates appointed to serve for the other hundreds within *Northumberland*; and if persons can be found within the said town and liberties thereof, with such qualifications as are required for deputy lieutenants and officers within cities which are counties of themselves, the chief magistrate of *Berwick upon Tweed* shall appoint five deputy lieutenants, and officers proportional to the number which the said town shall raise as their quota towards the militia of *Northumberland*; and the lieutenant of the county, and deputy lieutenants, and all other officers and persons acting in the execution of this act, for raising the militia within the said county, are to put this act into execution within the said town, and the liberties thereof, but subject to such penalties as are inflicted upon deputy lieutenants and other officers, for acting, not being duly qualified; and the militia men for the said town shall join the militia of the county, and be exercised together, and shall then, and in actual service, be deemed part of the militia of *Northumberland*. 42 *Geo.* 3. *c.* 90. *s.* 149.

After the number of persons which the *Isle of Wight* is to furnish to the militia of the county of *Southampton* shall have been appointed by his majesty's lieutenant and deputy lieutenants, or by the deputy lieutenants of the said county, the governor of the said island shall appoint the officers, and shall act in the execution of this act as the lieutenants of counties, and shall appoint five or more deputies to act with him for the said island; which deputies and officers shall be qualified in the same manner, and are to act in the execution of this act, as deputy lieutenants and officers in the several counties within *Wales* are; and the militia of the said island shall be raised as the militia of the county of *Southampton*, and shall be deemed a part of the militia of the said county; and after the same shall be raised, the said governor, lieutenant governor, and deputies, shall direct the training and exercising the said militia within the said island, in the same manner as the lieutenants and the deputy lieutenants are to do within *England*; and the militia raised within the said island shall remain within the said island as an internal defence thereof, unless his majesty shall otherwise direct. *s.* 150. Isle of Wight.

The constablery of *Craike*, parcel of the county of *Durham*, shall be deemed part of the north riding of *Yorkshire*. *s.* 151. Craike.

And that part of the parish of *Maker* which lies in *Cornwall* shall be deemed part of the county of *Cornwall*. *s.* 151. Maker.

And *Wokingham* shall be deemed part of *Berks.* 42 *Geo.* 3. *c.* 90. *s.* 151. Wokingham.

And the township of *Filey*, part of the east riding of *York*. *s.* 151. Filey.

Threapwood.

And *Threapwood*, part of the parish of *Worthenbury*, in *Flint*. *s.* 151.

Stamford Baron.

And *Saint Martin*, called *Stamford Baron*, in the suburbs of *Stamford*, on the south side of the waters called *Welland*, part of the county of *Lincoln*. *s.* 151.

And shall be subject to the jurisdiction and authority of the lieutenants, deputy lieutenants, justices of the peace, and other officers of the respective counties within which such towns are hereby deemed situate. *s.* 152.

The stannaries.

Nothing in this act shall extend to the tinners in *Devon* and *Cornwall**; but the warden of the stannaries, in pursuance of his majesty's commission, and such as he shall authorise under him, shall array, assess, arm, muster and exercise the said tinners, as hath been heretofore used according to the ancient customs of the stannaries. *s.* 154.

London militia.

The *militia of the city of* LONDON is now raised and regulated under and by virtue of the statute 36 *Geo.* 3. *c.* 92, and 39 *Geo.* 3. *c.* 82. *s.* 139.

Militia of the Tower Hamlets.

And the militia of the TOWER HAMLETS is to be trained and disciplined pursuant to the stat. 37 *Geo.* 3. *c.* 75. †

And all the clauses, provisions, powers, authorities, punishments, bounties, penalties, forfeitures, matters and things in this act contained, in relation to any persons, acts, matters, and things, as to which the stat. 26 *Geo.* 3. *c.*107, ‡ were in force, or to the respective militias of *London* and the *Tower Hamlets*, shall be applied and put in force, as to all such persons, matters and things, as far as the same can be applied, and are not contrary to any of the provisions of the said acts or either of them. *s.* 153.

Cinque Ports.

The warden of the cinque ports, two ancient towns, and their members, and in his absence, his lieutenant, shall put in execution, within the said ports, *&c.* all the powers given by this act, as lieutenants of counties, *&c.* and shall continue the usual number of soldiers in the said ports, *&c.* unless he find cause to lessen the same; and the militia of the said ports, *&c.* shall remain separate from the militia of the counties within which the said ports, *&c.* are situate; and the said warden or his lieutenant, in pursuance of orders from his majesty, in the manner prescribed by 13 & 14 *Car.* 2. *c.* 3, notwithstanding one or more months pay advanced be not reimbursed, may draw out the soldiers into actual service, and cause the persons charged, as by the said act, to provide their soldiers with pay in hand, not ex-

* This militia is now raised and regulated by the stat. 42 *Geo.* 3. *c.* 72; which being of a limited and local nature, is here omitted.

† The provisions contained in those acts, and that relating to the tower hamlets next mentioned, are of considerable length, and being only operative as to the city of *London* and the *Tower Hamlets*, are not sufficiently general to be inserted in this work.

‡ Now repealed by this act.

ceeding one month's pay, in such manner as if all the pay advanced had been reimbursed; and may use the like powers, and array, assess, arm, muster, and exercise the said soldiers, and make assessments, and issue warrants for the assessments for raising any trophy money, and for defraying the necessary charges of trophies, and other incident expenses of the militia of the said ports, &c. as hath been heretofore used, according to their ancient customs. *s.* 155.

Counties of Sussex and Kent.

His majesty's lieutenant, or on his death, *&c.* three deputy lieutenants, of the counties of *Sussex* and *Kent* respectively, shall issue orders to the chief constables of the several hundreds, in the rapes in the said counties where their subdivisions may be appointed, directing such chief constables to issue precepts to *the churchwardens or overseers of the poor* of each parish within their hundreds, to return to the deputy lieutenants within their subdivisions, lists, in writing, of the names of all the men dwelling within their parishes, between 18 and 45, distinguishing their occupations, and for such other purposes as are by this act directed to be done by the constables of each parish; and the churchwardens and overseers to whom such orders shall be issued, shall be deemed the officers of such parish, and shall be invested with all authorities, and be liable to the several pains as the constables of any parish are for refusing or neglecting to return such lists, or being guilty of fraud or partiality in making thereof, or not attending the orders issued by the lieutenant, or three deputy lieutenants, or for other offences. *s.* 156.

## XVI. *Annual certificates that the militia has been raised.*

Lieutenants of counties to send certified returns annually to the clerk of the peace to be filed.

*As it may happen through neglect or otherwise, that in some places the militia may not be raised according to the directions of this act, and as it is just and reasonable that all his majesty's subjects should contribute equally towards the expence of raising and supporting a militia for the defence of the kingdom, it is enacted, that* the lieutenant, or three deputy lieutenants of every county where the militia shall have been raised according to this act, shall on or before the 25th *Dec.* in every year, transmit a certificate to the clerk of the peace, containing an account of the names, number, and rank of the officers and privates in that year, and the time during which such militia hath been trained and exercised; and such clerk shall deliver such certificate to the justices at their general quarter session to be held next after 25th *Dec.* in every year, on the day on which such session shall be opened, and the same shall be filed among the records of such session; but where no such certificate shall be received by the clerk of the peace, he shall certify the same under his hand and seal to the justices; and

And the default of sending such returns to be

*certified by the clerk of the peace.*

such certificate shall be filed among the records of such session. 42 *Geo.* 3. *c.* 90. *s.* 157.

*Counties not raising their quotas to pay 10l. per man.*

In every county or place in which the full number of men required by this act shall not be raised and completed within six months after 26th *June*, 1802, or after the same shall have been fixed by any subsequent order of his majesty in council as before directed, then the sum of 10*l*. shall be annually paid in lieu of every private militia man less than the quota, who shall not have been raised within the time limited by this act; and the justices of the peace and magistrates of every such county, assembled at the general or quarter sessions to be held next after the expiration of the said six months, shall, upon the receipt of the certificate of the lieutenant, or the deputy lieutenants, assess the said sum of 10*l*. *per* man upon every such county or place; and in case at any future time the number of men required to be provided for the militia of any county, according to this act, shall not be provided within three calendar months after the lieutenant, or one of the three deputy lieutenants, shall have had notice from the commanding officer of any regiment, battalion, or corps of any such deficiency, then the justices and magistrates at the next general or quarter sessions after such deficiency shall have been made known to them by the lieutenant or deputy lieutenants, shall assess the like sum of 10*l*. for every man so deficient upon every county or place. *s.* 158.

*Penalty for not filling up vacancies.*

And the colonels or other commandants shall, during the period of the militia being embodied and called out into actual service, transmit to the justices of the peace at every quarter sessions of the peace, certificates (T.) of the deficiencies and vacancies that remain to be filled up in their respective regiments, battalions, corps, or independent companies; and the justices at such sessions shall assess the penalty of 10*l*. for each private man so certified to be deficient as aforesaid; and if, at the general quarter sessions of the peace immediately succeeding the quarter sessions of the peace at which any such assessment shall have been made, any deficiency in respect whereof any such assessment shall have been made, shall not have been made good and filled up, such justices shall assess and levy, in like manner, a further penalty of 10*l*. for every private man so deficient: and shall, from time to time, at every succeeding general quarter sessions of the peace, proceed to assess and levy further and additional penalties as aforesaid, and 10*l*. for each private man deficient, until such deficiencies shall have been filled up. 43 *Geo.* 3. *c.* 50 *s.* 4.

*Assessment how to be made.*

The justices and magistrates, in making such rate upon the whole county or place, shall apportion the sums assessed, and assess the same upon the several parishes in such county, in the same proportions in which the men for the militia are required to be raised, according to such appointment as may

have been made in pursuance of this act. 42 *Geo.* 3. *c.* 90. *s.* 159.

When in any county such deficiency of men shall arise from the default of any particular parish or tithing in not raising the proportion required, then the said justices and magistrates, in making such rate, shall rate such sums upon such parish or tithing that shall have made default, in proportion to the number by which each of such parishes shall fall short of the number of men required. *s.* 160.

When the deficiency shall arise in any particular parish.

The justices and magistrates of the several counties and places where any such rate shall be made, shall, immediately after, transmit the several amounts of the sums so assessed upon the several parishes to the treasurer of such county, and such treasurer shall, as soon as conveniently may be, cause notice thereof to be given to the overseers of the poor; and such overseers shall, within fourteen days after, pay the amount out of any money in their hands, of the rates for the poor; and if they shall not have sufficient, then such overseers shall make a rate sufficient to satisfy such rate; and it shall be lawful for the overseers to levy and collect the same in such manner as rates made for the relief of the poor, or for the purposes of this act. *s.* 161.

Justices to transmit the amount of the sums assessed to the county treasurer;

The treasurer receiving any such money shall retain such money in his hands for three calendar months after receipt thereof; and during said period it shall be lawful for any deputy-lieutenant of the subdivision within which such parish or place shall be situate to raise any volunteers in lieu of such men as shall be deficient, and to agree with each for a bounty not exceeding 10*l.*; and the deputy-lieutenant before whom such volunteer shall be duly examined, approved, sworn, and enrolled to serve in the militia, shall make an order upon such treasurer for the payment of such bounty; and upon the production to such treasurer of a certificate under the hands of such deputy-lieutenant, of any such volunteer having been duly examined, approved, sworn, and enrolled, and of such order for the payment of such bounty, and of a certificate under the hands of the commanding officer of such man having joined his corps, such treasurer shall pay out of such money any sum not exceeding 10*l.* for each of such volunteers; and such treasurer shall, at the expiration of three months after the receipt of such money, pay all money come into his hands for any such fines as aforesaid, and not paid for such volunteer, to the receiver-general of the county, to be applied in manner directed by this act. *s.* 162.

Who shall pay thereout bounties to any volunteers that the deputy-lieutenants may raise.

In all cases where the militia shall not be raised within any city or place not rated to the county rate, the proportion of the said 10*l.* per man, to be borne by such city, town, or place, shall be raised and collected by a separate rate in like manner, by the overseers of the poor, and by the like ways as the rates for the relief of the poor can be raised and collected; and such

Where there are no county rates, the assessments may be raised as the poor rates.

overseers shall pay over the same to the treasurer of the county with which such city, town, or place, shall be joined, for the purpose of raising the militia. *s.* 163.

How in a town lying in two counties.

Where any town lies in two counties or ridings, or part thereof in a county, and part in a riding, the proportion of the said money to be paid in lieu of raising the militia, shall be paid to the treasurer of the county or riding wherein the church is situate. *s.* 164.

If not paid to the county treasurer before June, yearly, it may be levied on the overseers.

If any sum which ought to be paid by any city, town, or place not rated to the county rate, shall not be paid to the treasurer of the county before the 1st of *June* in every year, the justices shall, at their next *Midsummer* quarter sessions (by their warrant directed to any constable or tithingman), cause the sum due from such parish by reason of such men not being raised, to be levied by distress and sale of the goods of the overseers of every parish, and division, rendering the overplus (if any) to the owners, after such money, and the charges attending such distress and sale, shall be fully paid; and all such overseers shall be reimbursed the money so levied on them, by the same ways as overseers of the poor are reimbursed the money by them expended for the relief of the poor, and may make a rate for that purpose. *s.* 165.

When the assessment upon any place is paid to the receiver general, it shall be indemnified for not raising its quota that year.

Every receiver-general of the duties under the management of the commissioners of taxes, to whom any such money shall be paid, shall give a receipt for such money to the person paying the same; and when the whole sum directed to be raised, in any county or place shall be paid into the hands of the receiver-general, such payment shall be a full discharge to such county for the failure in raising and training the number of men for the year in respect whereof such payment shall be made; and such receiver-general shall, within ten days after the receipt of such money, certify such receipt to the commissioners of the treasury, and forthwith pay the same into the exchequer; and the money so paid shall be kept apart from all other money, and shall be accounted for yearly to parliament, and disposed of as parliament shall direct; and no fee whatsoever shall be paid to any officer of the Exchequer for receiving or issuing any such money. *s.* 166.

Treasury may allow the receiver general a salary.

And the commissioners of the treasury are to allow to the receiver-general for any such county, upon the clearing of his accounts, such salary for his pains in receiving and paying in such money as the said commissioners shall think proper, not exceeding two pence in the pound. *s.* 166.

County treasurer and constables' poundage upon assessments received.

The treasurer of every county or place in which any such money shall be raised, shall be allowed for his pains and trouble one penny in the pound upon the whole sum received and paid; which allowance he is authorized to detain in his hands before payment to the receiver-general; and every high constable, petty constable, churchwarden, and overseer, who

shall act in the raising and collecting of the said money, shall be allowed by such treasurer one penny in the pound; and such treasurer is to deduct the same out of the money so received by him, and to pay the proportions thereof to such high constables or other officers. *s.* 167.

Clerk of the peace to transmit copies of certified returns to the treasury, and also a certificate of omissions.

The clerk of the peace for every county or place shall, within fourteen days next after the general quarter session of the peace to be held next after the 25th day of *December*, yearly transmit to the commissioners of the treasury, and also to the receiver-general for such county, a copy signed by such clerk of the peace, of every certificate which he shall have received from the lieutenant, or three deputy lieutenants; and where such certificate shall be omitted to be delivered, the clerk of the peace shall certify such omission to the commissioners of the treasury, and also to the receiver-general, and that such clerk of the peace hath certified the same to the justices at such general quarter session, and required such justices to proceed according to this act; and such clerk of the peace shall also certify what proceedings have been had at such general quarter sessions, in relation to the assessing of the said money where the militia shall not have been raised: and in case such justices shall omit, neglect, or refuse to proceed to raise the said money according to this act, then the clerk of the peace shall, within fourteen days next after such general quarter session, certify the same to the solicitor of the treasury, and the names of the justices who shall be present at such session; and the solicitor of the treasury is, on receipt of such certificate, forthwith to proceed by all legal ways to compel such justices to pay due obedience to this act, and to cause the money to be raised. *s.* 168.

Solicitor of the treasury to compel the levying of assessment.

If the said sum of 10*l.* per man, to be raised in any such county or place, shall not be levied and paid into the exchequer as before directed, the solicitor of the treasury is forthwith upon knowledge or information thereof, to proceed, by all legal ways to compel the levying and collecting of such money and the payment thereof into the Exchequer. *s.* 169.

Penalty on the clerks of the peace for defaults.

If any clerk of the peace shall refuse or wilfully neglect to receive, deliver, file, make, record, or transmit any such certificates as aforesaid according to this act, such clerk of the peace shall forfeit 100*l.* and also his office, and be rendered incapable of having, receiving, or holding any office of trust, civil or military, under the crown. *s.* 170.

Penalty on receivers general, county treasurer, and constables for defaults.

And if any receiver-general, treasurer, chief constable, petty constable, or other officer who ought to act in the raising and collecting of the said money, shall wilfully omit, or neglect, or refuse to act therein, according to this act, such receiver general or treasurer shall forfeit 200*l.*; and every such chief constable

shall forfeit 50*l.* and every such petty constables or other officer shall forfeit 20*l.* *s.* 170.

Solicitor of the treasury to prosecute.

And the solicitor of the treasury shall, with all due diligence, prosecute with effect all such justices of the peace, receivers-general, treasurers, and other officers; and in case the solicitor shall wilfully omit or delay to proceed against such officers aforesaid, he shall forfeit 500*l.* *s.* 170.

## *XVII. Privileges of militia men.*

Not liable to serve as sheriff.

No officer of the militia shall be compelled to serve sheriff. 42 *Geo.* 3. *c.* 90. *s.* 172.

May go to vote at election.

No officer, non-commissioned officer, drummer, or private man shall be liable to any penalty or punishment for absence during the time he shall be going to vote at any election of a member in parliament, or during the time he shall be returning from such election. *s.* 173.

Not liable to serve parish offices.

No serjeant, corporal, or drummer, nor any private man, from the time of his inrolment until discharged, shall be compelled to serve as a peace or parish officer, or to perform any highway duty. *s.* 174.

May set up trades in any place, and shall be irremoveable therefrom.

Every person having served in the militia when drawn out into actual service, *being a married man,* may set up in any trade in any town or place within *Great Britain,* as any mariner or soldier may under the act 24 *Geo.* 3. *c.* 6. *s.* 175.*

And no such militia man shall be liable to be removed out of any such town or place until he is become chargeable to the parish. *s.* 175.

In the case of *the K.* v. *the Inhabitants of Gwenop,* Hil. 29 *Geo.* 3, it was contended that this privilege extends to *all persons whatsoever* who have served in the militia and are married, whether *such persons are in trade* or only labourers, and consequently that labourers in husbandry, and like persons who have served in the militia, and are married, are irremoveable until they become chargeable, in like manner as tradesmen expressly are: But the court were unanimously of opinion that the clause relates to *persons in trade only,* and not to common labourers, who cannot suffer the same inconveniences as the former, for they can easily find employment wherever they may happen to be: yet, if a militia man who has served goes to a town for the purpose of setting up a trade there, he cannot be removed before he has set up that trade, because he who is privileged to *reside* in a place is privileged in *going there* for that purpose. 3 *Term Rep.* 133.

Privilege of of-

For the privilege of officers on half pay serving in the militia,

* See this act under title Soldiers.

see the section of the general act in p. 319 supra, and the section of the annual pay and clothing act in p. 381 infra. — ficers on half pay.

For cases where militia men are entitled to the benefit of *Chelsea Hospital*, see the 86th and 117th sections of the general act in pages 383 and 398 supra. — Chelsea pensioners.

## XVIII. *Recovery of penalties inflicted by the militia act and general powers.*

Recovery of penalties.

All fines, penalties, and forfeitures which shall exceed 20*l.* shall be recovered in any court of record at *Westminster*, or great session in *Wales*, or the courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*. 42 *Geo.* 3. *c.* 90. *s.* 176.

And all penalties which shall not exceed 20*l.* shall on proof upon oath of the offence before any justice of the peace, be levied by distress and sale of the offender's goods, by warrant under the hand and seal of such justice, rendering the overplus on demand, after deducting charges of distress and sale, to the person whose goods shall have been distrained; and for want of distress, such justice is, where no particular time of commitment is before directed, to commit such offender to the common gaol for not exceeding three months. *s.* 176.

And the money arising by all such fines, penalties and forfeitures the application whereof is not otherwise directed, shall be paid to the clerks, or (where no clerks) to the commanding officers of the regiments of the counties where the offences shall have been committed, and shall be made part of the public stock of such regiments. *s.* 176.

And no order or conviction made by any lieutenant of any county, or by two deputy-lieutenants, or by one deputy-lieutenant, with one justice, or by any justice by virtue of this act, shall be removed by *certiorari*; and no writ of *certiorari* shall supersede any execution or other proceedings upon such order. *s.* 177.

Power of administering oath.

In all cases in the execution of this act, when any matter is to be examined into upon oath before any lieutenant, deputy-lieutenant, or justice, such lieutenant, deputy-lieutenant, or justice, is to administer such oath; and all other oaths to be taken in pursuance of this act shall be administered by one lieutenant or deputy-lieutenant. *s.* 67.

General indemnity for acting.

And all the provisions of 24 *Geo.* 2. *c.* 44, for rendering justices * more safe in the execution of their office, shall extend to all lieutenants, and deputy-lieutenants, acting in the execution of this or any act relating to the militia. *s.* 171.

Constables and

If any chief or other constable, headborough, tythingman, or

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* See p. 147 148, supra.

*other officers being quakers.*

overseer, shall be of the people called *quakers* (and certified to be so by two *quakers*), and shall neglect or refuse to act, two justices of the peace acting for the division are, in all cases where the circumstances of the case shall render it expedient, by order under their hands and seals, to appoint a fit person to be deputy to such quaker, for the purpose only of carrying this act into execution; and every person so appointed shall have all the powers given by this act to such officer, and shall perform the like duties under the like pains as are hereby imposed for neglect of duty of any such officer; and where an appointment of any deputy shall be so made, the principal (being one of the people called *quakers*), shall be discharged from the performance of any duty required of him by this act, and from all penalties incurred for neglect thereof after such appointment. *s.* 33.

*Limitations of actions.*

And actions for any thing done in pursuance of this act shall be commenced within six months, and laid in the county where the cause of complaint did arise; and the defendant may plead the general issue: and if the jury shall find for the defendant, &c. he shall have treble costs. *s.* 178.

## *XIX. Pay and cloathing the militia.*

*The pay and cloathing of the militia while embodied * is provided for by an act of parliament which passes annually; and the* 46 Geo. 3. c. 19, *which is the act relating hereto, is to the following effect;*

*Where the militia is raised, the receiver-general of the county is to issue four months pay in advance according to the establishment of pay here set down.*

In every county, riding, or place, within *England*, where the militia is or shall be raised, the receiver-general of the land tax shall issue the sums required for the uses herein-after mentioned *viz.* for the pay of the said militia, for four calendar months in advance, at the rate of 6*s.* a day for each adjutant,—3*s.* a day for each quarter master, and 1*s.* 6*d.* a day for each serjeant, with the addition of 2*s.* 6*d.* a week for each serjeant-major, 1*s.* 2*d.* a day for each corporal, 1*s.* a day for each drummer, with the addition of 6*d.* a day for each drum-major,—and at the rate of 4*d.* a month for each private man and drummer, for defraying the contingent expence of each regiment, battalion, corps and independant company; one moiety whereof it shall be lawful to apply in aid of the stoppage fund, for providing the men with necessaries under the direction of the colonel or other commandant during annual exercise;—and also for half a year's salary for the clerk of each regiment, *&c.* at the rate of 50*l.* a year; and also for the respective allowance to the clerks of the general meetings, and clerks of the several subdivision meetings, at the rates following, *viz.* to the clerk of the general meetings 5*l.* 5*s.* for each meet-

*And also half a year's salary for the regimental and battalion clerks.*

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* When embodied they are to be paid at the same rate as the regulars. 42 *Geo.* 3. *c.* 90. *s.* 117.

ing; and to the several clerks of the subdivision meetings 1*l.* 1*s.* for each meeting; and also for the clothing of the militia for such county, &c. at the rate of 3*l.* 10*s.* for each serjeant; 2*l.* for each corporal and drummer, with the addition of 1*l.* for each serjeant-major, and drum-major (where such serjeant-majors, drum-majors, serjeants, corporals and drummers, have not been cloathed within two years); and with respect to the private militia men at the rate of 1*l.* 12*s.* for each private man. *s.* 1.

And also the allowances to the clerks of the general and subdivision meetings, and for their cloathing.

But where any serjeant, corporal, or drummer shall be absent on furlough he shall during such absence receive pay at the following rates instead of those above-mentioned viz. every serjeant 1*s.* per day, corporal, 8*d.* and every drummer, 6*d.* and no more. *s.* 1.

Rates of pay when on furlough.

And such further allowance shall be made to such general and subdivision clerks for their expences and trouble in amending the returns of persons returned liable to serve by taking out the names of all persons who may appeal, and whose appeals or claims of exemptions have been allowed, and inserting the names of any persons that shall have been omitted to be inserted, and in numbering the returns and making out the tickets for the ballot, after the rate of one pound fifteen shillings for every one thousand names of persons returned liable to serve; and also for the annual expences incurred by such clerks and for printing any stationary used for the purpose of this act, so far as to the lord lieutenants, or deputy-lieutenants, shall appear reasonable; and in case the orders made by the lord lieutenants or deputy-lieutenants for the payment of such further allowances shall be confirmed at a general meeting of not less than five deputy-lieutenants, but not otherwise. *s.* 2.

Further allowances to the clerks of the general and subdivision meetings for amending returns, &c.

And all such sums of money as aforesaid, except such as shall be due to the clerks of the meetings, shall be paid by the receivers general of the land tax, into the hands of the clerk of the regiment, battalion, or corps, upon his producing his warrant of appointment to such office, under the hand and seal of the colonel or commandant respectively; and where the militia shall be formed into an independent company, such sums shall be paid by the receiver general into the hands of the captains, or to such person as each captain shall authorize to receive the same, and such receiver general, shall also, within fourteen days after the expiration of the third calendar month from the time of the first payment, make a second payment for four calendar months in advance; and shall also, within fourteen days after the expiration of the third calendar month from the time of the said second payment, make a third payment for four calendar months in advance for the pay and contingent expences of the militia, and for the allowances to the regimental or battalion clerks; and the receipt of such clerks, and of such captains of independent companies, or of such persons as such cap-

The money (except to the clerks of the meetings) to be paid by the receiver general to the clerk of the regiment; and for independent companies, to the captain, &c.

Receipts of the parties to be a discharge

tains shall authorize to receive such money, shall be a sufficient discharge to such receiver general. *s.* 3.

Clerks to pay the adjutant, &c. at certain periods, as also captains of independent companies to distribute the pay of them at certain periods, &c.

And the clerk of each regiment, battalion, or corps, shall forthwith, after the receipt of such sums, pay to the adjutant one calendar month's pay in advance on account of his own pay, and of the pay of the quarter master; and also two months pay in advance for the serjeant-major, drum-major, serjeants, corporals, and drummers; and on the twenty-fifth of every subsequent month the said clerk shall pay to such adjutant, one other month's pay in advance for himself, and for the quarter-master, serjeant-major, drum-major, serjeants, corporals, and drummers, which pay such adjutant is to distribute to the several persons entitled to receive the same as it shall become due (except for the period of exercise as herein-after directed); and the captain or commanding officer of each independent company is to distribute in like manner, to each person of his company entitled thereto, such money as he shall receive for their pay; and three times in the year every such adjutant shall give in to the clerk of the regiment, battalion, or corps, and every such captain, or commanding officer of an independent company shall give in to the receiver general, an account of the several payments he shall have made according to the following form: *

Balance to be paid back.

And shall respectively pay back to the said clerk, or to the receiver general, the surplus (if any) of the money then remaining in his hands. *s.* 4.

On certificate of discharge of a serjeant, &c. no pay to be issued for him.

But in case the commanding officer shall certify in writing to the clerk or to the receiver general, that he hath discharged any serjeant, corporal, or drummer, in such case no pay shall be issued for such serjeant, corporal, or drummer, until another be appointed. *s.* 5.

Clerk to pay out of contingent money for repair of arms, &c. and to make up his accounts for the examination of the commandant.

The clerk of each regiment, battalion, or corps, out of the money issued to him, shall from to time, pay such sums as may be necessary for the repair of arms, and the carriage and removal thereof, or in aid of the stoppage fund for supplying the men with necessaries, upon an order in writing signed by the colonel or commandant; and after payment of such sums as shall be drawn on him by such colonel or commandant, he shall three times in the year make up accounts of all such money, and the expenditure thereof, and of the balance remaining in his hands, which balance shall form a stock purse for the use of the regiment, and transmit the same to the colonel or commandant, to be by him examined, allowed and signed; and the said accounts, so allowed and signed, shall be the proper vouchers and acquittal of such clerk for the disposal of such money. *s.* 6.

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* See table in the following page.

| Date of Receipt. | County of Dr. | £. | s. | d. | *Per contra* Cr. | £. | s. | d. |
|---|---|---|---|---|---|---|---|---|
| | To cash received of Mr. regimental or battalion clerk, or receiver general [*as the case may be*] for two months pay in advance, from to — | | | | Paid myself days pay from the of to the of following. | | | |
| | | | | | Paid quarter-master for days pay, at from the to the of following | | | |
| | Do. for Months pay in advance, from to | | | | Paid serjeant for days [full pay *or*, on furlough *as the case may be*] from the of to the of following — | | | |
| | Do. for months pay in advance, from to | | | | Ditto as serjeant major | | | |
| | Do. for months pay in advance, from to | | | | Paid serjeant for days [full pay *or* on furlough, *as the case may be*] from the of to the of following — | | | |
| | | | | | Paid corporal days [full pay, *or*, on furlough, *as the case may be*] from the of to the of following — | | | |
| | | | | | Paid drummer days [full pay, *or* on furlough, *as the case may be*] at from the of to the of following — | | | |
| | | | | | Ditto as drum-major | | | |
| | | | | | Paid drummer days [full pay, *or*, on furlough, *as the case may be*] from the of to the of following — | | | |

Money for independent companies to be accounted for to the receiver general.

The money directed to be issued for the contingent expences of each independent company, shall be in like manner applied to the particular use of such independent company, by the captain, and shall three times in the year be in like manner accounted for to the receiver general, whose allowance of such account shall be the proper voucher for the expenditure. *s* 7.

Clerk to retain his salary.

And the said regimental or battalion clerk may retain to his own use, out of the money by him received, such further sums as shall complete the allowance before made for his salary. *s.* 8.

Lieutenant or three deputy lieutenants, to certify to the receiver general the days of exercise, &c. who shall pay to the regimental clerks the sums herein specified, &c.

Whenever his majesty's lieutenant, or (in his absence) any three or more deputy-lieutenants, shall have fixed the days of exercise, he or they shall, as soon as may be, certify the same to the receiver general, specifying the number of men, and the number of days such men are to be absent from home, not exceeding in the whole twenty-eight; and such receiver general is, within fourteen days after the receipt of such certificate, to issue to the clerks of the several regiments, battalions, or corps, pay at the rate of nine shillings and five pence *per* day for each field officer, and for the captain of each company; and at the rate of five shillings and eight pence *per* day for each lieutenant; and of four shillings and eight pence *per* day for each ensign; and at the rate of ten shillings *per* day for each surgeon; together with two shillings *per* day (additional) for each adjutant, and two shillings and eight-pence *per* day (additional) for each quarter-master; and also at the rate of one shilling *per* day for each private militia man, and a further allowance of beer money, at the rate of one penny *per diem* for each of the said private men, and also for each serjeant-major, drum-major, serjeant, corporal, and drummer, for the number of days so certified, not exceeding in the whole twenty-eight; and in such counties where there shall be independent companies only, the receivers general shall issue to the captains of such independent companies, pay at the rates aforesaid respectively for the captain, lieutenants, ensigns, and private men, together with beer money as aforesaid for the serjeants, corporals, drummers, and private men; and the said regimental or battalion clerks are forthwith to pay to each captain, the proportion of pay belonging to each captain, and likewise the pay and beer money belonging to their companies, according to this act. *s.* 9.

Adjutants who have received pay for the serjeants, &c. shall pay over a proportion for the period of exercise to the respective captains.

And every adjutant who shall have received from the regimental or battalion clerk, the pay in advance for the serjeants, corporals, and drummers, shall pay over to the captain or commanding officer of each company, the proportion of pay belonging to the non-commissioned officers and drummers of their companies, for the period of exercise; which pay, so received from the adjutant and regimental or battalion clerks, the said captains or commanding officers are to distribute to the persons entitled thereto, according to this act. *s.* 10.

The innholders and others on whom the non-commissioned officers, drummers, and private men shall be quartered and billetted, shall be entitled to and receive the same rates of allowance for each serjeant-major, drum-major, serjeant, corporal, drummer, and private man quartered and billetted upon them during the time of their remaining assembled for exercise, and under the same rules as such innholders or others may now demand and receive for the non-commissioned officers, drummers, and private soldiers of the regular infantry *, and the receivers general are to supply the regimental or battalion clerks or the captains of independent companies, (as the case may be), with the necessary funds to enable the said clerks and captains to defray the charge of the allowances; and the said regimental or battalion clerks are to pay to each captain, the proportion of the said allowance belonging to each company: But each of the non-commissioned officers, drummers, and private men, who shall be furnished with diet and small beer, shall contribute towards the expence thereof the like proportion of his pay and beer money, as is contributed in the like case by the non-commissioned officers, drummers, and soldiers of the regular infantry. *s.* 11.

*The same rates to be paid for billetting the militia during the annual exercise as are allowed for the regular infantry.*

Receivers general to supply money for paying such allowances.

Militia to contribute towards the expence of diet and small beer as the regular infantry.

And the captain of each company shall make up an account of all monies received and paid by him on account of such exercise, according to the form in the next page.

Captains to make up an account of receipts and payments.

Which account shall be signed by the said captain, and (except in the case of independent companies) countersigned by the commanding officer; and such captain shall, within ten days after the time such exercise is finished, deliver such account, and pay the balance, if there be any due, to the regimental or battalion clerk, or if captain of an independent company, to the receiver general; and such accounts shall be allowed as vouchers in the passing of the accounts of such receiver general. *s.* 12.

Accounts to be signed and counter-signed, &c.

Where any regiment, battalion, corps, or independent company, shall be embodied or called out into actual service, and thereby the officers and men thereof shall be entitled to the same pay as the officers and men in his majesty's other regiments of foot receive, all pay and allowances as aforesaid from the receivers general, whether to the adjutants, quarter-masters, serjeant majors, drum-majors, serjeants, corporals, drummers, private men, or others, and all money allowed for contingent expences or for necessaries, and also the allowance to the clerk, shall, during such time of actual service, and until such regiment shall be disembodied and return home, cease. *s.* 13.

During the time the militia is embodied, pay and allowances from the receivers general shall cease.

The receivers general shall pay to the clerk of the general

Receivers ge-

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* For this, See title Soldiers.

| County of Dr. | £. | s. | d. | Per contra | £. | s. | d. |
|---|---|---|---|---|---|---|---|
| To cash received of the regimental or battalion clerk or receiver general [*as the case shall be*] for days pay and beer money, of men — | | | | By my pay captain — | | | |
| Ditto for the rates allowed to innholders and others, on whom the men have been billetted. | | | | Paid lieutenant — | | | |
| | | | | Paid ensign — — | | | |
| | | | | Paid serjeant for days from the of to the of following — — | | | |
| | | | | Paid corporal days from the of to the of following | | | |
| | | | | Paid drummer days at from the of to the of following | | | |
| | | | | Paid militia men days from the of to the of following | | | |
| | | | | Paid the innholders on whom the non-commissioned officers and men of my company have been billetted, viz. — — — | | | |
| | | | | For diet and small beer for men for days — (£. s. d.) | | | |
| | | | | Deduct the proportion charged to the said non-commissioned officers and men, and included in their pay as above (£. s. d.) | | | |
| | | | | For the smaller articles in lieu of diet and small beer, for men for days | | | |

*N. B.* This account is of course to include all other proper receipts and charges, although not enumerated in the above form.

meetings his allowance at the rate of five pounds and five shillings for each meeting, or such further allowance as may be made, as herein-before directed, upon his producing an order for that purpose from his majesty's lieutenant, or from three deputy-lieutenants assembled at some general meeting, and shall also pay to each of the clerks of the subdivision meetings their several allowances, at the rate of one pound and one shilling for each meeting, or such further allowance as may be made as herein-before directed, upon his producing an order from one or more deputy-lieutenants, assembled in the subdivision meetings, which orders, certifying the days of meeting, at what places, and for what purposes the said general and subdivision meetings have been held, together with the clerk's receipt for the sums claimed, shall be to the receivers general a sufficient discharge for the payment of such allowances, and be allowed in their account. s. 14.

neral to pay allowances to clerks of the general and subdivision meetings.

But the clerk of each regiment, battalion, or corps shall give security to the receiver general, by a bond to his majesty, in the penalty of one half of the sum required for the whole year's charge for the regiment, battalion, or corps, for duly answering and paying such sums as he shall from time to time have received, and for duly accounting for the same, and for performance of the trust in him reposed, which bond shall be lodged in the hands of the receiver general, who, in case the said clerk shall not perform the conditions, shall put the said bond in suit in the name of his majesty, the full costs of which suit, in case judgment shall be given against such clerk, shall be paid by him to the receivers general, who shall likewise be entitled to five pounds *per cent.* out of all such monies as shall be by them recovered thereon, and shall account for the residue thereof with the proper auditor of the revenue; the said receivers general charging themselves therewith upon the next account. s. 15.

Regimental clerk to give security by bond.

Receiver general to put bonds in suit, who shall be entitled to 5*l.* per cent. of the money recovered.

And the clerk of every regiment, battalion, or corps, and the captain of every independant company, shall between twenty-fifth of *March* and the twenty-fourth of *June* 1807, deliver to the receiver general, a fair account in writing of all monies by him received and disbursed for the service of the year ending twenty-fourth of *March*, 1807, in pursuance of this act, with proper vouchers for the same, and shall pay back to the said receivers, any surplus then in his hands; which account signed by such clerk, or by such captain respectively shall be transmitted by the said receivers general into the office of the proper auditor of the revenue. s. 16.

Regimental clerks, &c. to deliver accounts of their receipts and payments to the receiver general, and pay balances, &c.

All penalties, costs, and charges of suit, and all sums of money for which any person is by this act made answerable, may be recovered in any courts of record at *Westminster*. s. 17.

Recovery of penalties and costs.

No fee whatsoever shall be given upon any warrant or sum of money issued in pursuance of this act. s. 18.

No fee payable for any warrant.

Persons on half pay, or entitled to allowance as having served in the horse guards, &c. serving in the militia, may receive the same on taking the following oath:

Any person being on half pay, or being entitled to any allowance as having served in either of the two troops of horse guards, or regiments of horse, reduced, and serving in the militia, may receive the subsistence money by this act directed to be paid to field officers, captains, lieutenants, ensigns, adjutants, quarter masters, surgeons, or regimental or battalion clerks; and the receiving such subsistence money, shall not be deemed a receiving of pay so as to prevent such person on half pay, from receiving his half pay, and such person shall take the following oath before some justice of the peace.

*I A. B. do swear, That I had not, between the ——— and the ——— any place or employment of profit, civil or military, under his majesty, besides my allowance of half pay as a reduced ——— in ——— late regiment of ——* [or, *allowance as* —— *in* ——— *late troop of horse guards*, or, ——— regiment of horse reduced] save and except my subsistence [as a field officer, captain, lieutenant, ensign, adjutant, quarter master, surgeon, or regimental or battalion clerk, *as the case may be*] for serving in the militia of the county of

And the taking the said oath shall be sufficient to entitle such person to receive his half pay, or allowance, without taking any other oath. *s.* 19.

Adjutants after 30 years service 15 of which as adjutant of militia, entitled to receive a certain allowance.

If any adjutant of militia who shall have served faithfully either in his majesty's regular forces, or in the militia, for the full term of thirty years in the whole, fifteen of which he shall have served as an adjutant of militia, shall by age or infirmity be rendered unfit for further service, he shall, on producing to the receiver general of the land tax for the county to which such militia shall belong, a certificate of such service, from the commanding officers of the different corps to which he shall have belonged, be entitled to receive, and the receivers general shall pay to such person an allowance at the rate of six shillings *per* day: but no person shall be entitled to receive such allowance who shall have served for a less term than fifteen years, as an adjutant of militia, or who shall hold any office or employment of profit civil or military, under his majesty, except as regimental or battalion clerk. *s.* 20.

If any regiment shall cease, an allowance shall be made the adjutant to March 25, 1807.

And in case any regiment, battalion, corps, or independent company, shall have already ceased or been reduced in its establishment, or shall cease or be reduced in its establishment during the continuance of this act, the sum of three shillings *per diem* shall be paid to such person as has actually served as adjutant from the twenty-fifth day of *March* one thousand eight hundred and six, or from the time such regiment, battalion, corps, or independent company, shall cease, or be reduced in its establishment, to the twenty-fifth day of *March* one thousand eight hundred and seven. *s.* 21.

And if any surgeon of militia, having served faithfully in the militia for the full term of thirty years, shall by age or infirmity be rendered unfit for further service, he shall, on producing to the receiver general a certificate of such service from the commanding officers of the different corps to which he shall have belonged, be entitled to receive, and the receivers general shall pay to such person, an allowance at the rate of three shillings *per* day: but no person shall be entitled to receive such allowance who shall hold any office or employment of profit, civil or military, under his majesty. *s.* 22.

Surgeons after 30 years service entitled to a certain allowance.

## XX. *Allowances to subaltern officers in the militia; and to reduced adjutants and serjeant-majors.*

By 46 *Geo.* 3. *c.* 21, [annual] the following annual allowances over and above the pay to which they are now entitled, during the time of annual exercise, shall be paid to every subaltern officer now bearing a commission and serving in the militia, who shall continue faithfully to serve in the same corps, or who, previously to the expiration of three months from 22 *March*, 1806, shall be duly appointed to a commission, and shall continue faithfully to serve in the embodied militia, and in the same corps until the disembodying thereof; (that is to say), to a *lieutenant* or a *surgeon* twenty-five pounds eighteen shillings and sixpence, being at the rate of one shilling and five-pence per *diem* for three hundred and sixty-six days; and to an *ensign* twenty-one pounds seven shillings, being at the rate of one shilling and two pence per *diem* for three hundred and sixty six days.

The annual allowance herein mentioned beside the pay to which they are entitled during annual exercise shall be made to lieutenants, surgeons, and ensigns.

But all such officers as are now serving with the rank of captain lieutenant, shall be deemed to be lieutenants for the purposes of this act. *s.* 1.

And no person who is or shall become possessed of such an estate, as would by law qualify him to hold the commission of captain, or who is or shall be appointed adjutant or battalion clerk, nor any person deriving in any way whatsoever otherwise than as a subaltern officer or surgeon of the militia, any income, stipend, or allowance whatever from the public, nor any officer on the full or half pay of the navy, army, or marines, who shall also hold a subaltern's or surgeon's commission, and have served as aforesaid in the militia, shall have the said annual allowances, or any part thereof. *s.* 2.

Exceptions.

And the subaltern officers and surgeons who shall claim the said annual allowances, shall, previous to receiving the same, and in order to entitle themselves thereto, take and subscribe an oath before one justice of the peace of the county to which the regiment shall belong, in the words following: (*videlicet*),

Subalterns and surgeons to take the following

*I A. B. do swear, that I belonged to the* —— *of militia when*

Oath.

*the same was disembodied, and that I have continued to serve therein from that time until the ——— day of ——— inclusive, as a [captain lieutenant, lieutenant, ensign, or surgeon, as the case may be], and that I was not, in my own right or in right of my wife, during the said period, in the actual possession and enjoyment or receipt of the rents and profits of lands, tenements, or hereditaments of such an annual value above reprises, as would qualify me to hold a commission of captain of a company in the militia; that I have not, during the above period, held the appointment of adjutant or battalion clerk in any regiment, battalion, or corps, of militia; that I did not hold or enjoy nor did or has any person for me hold or enjoy, or held or enjoyed, during the said period, any office or income whatsoever from the public, except my pay as ——— for the period of the corps having assembled to be trained and exercised; and that I was not entitled during the said period, either to the full or half pay of the navy, army, or marines.*

So help me GOD.

Justices to transmit oaths to the receiver general.

Which oath so taken and subscribed, shall be by the said justices forthwith certified and transmitted to the receiver general of the land tax of the county. *s.* 3.

Subalterns and surgeons to attend the annual exercise; on pain of forfeiting the allowance and their pay.

And every subaltern officer and surgeon entitled to the benefits of this act, shall regularly attend the annual exercise and training, during the whole of the time, and shall, during the said time, perform his duty as a subaltern officer, or surgeon, on pain of forfeiting the said annual allowance as well as the rest of his pay. *s.* 4.

Certificates of such attendance to be transmitted by the commanding officer to the lieutenant and receiver general.

And certificates of his having so attended and performed his duty, signed by the commanding officer, shall be transmitted by the said commanding officer to the lieutenant of the county, and also to the receiver general.

In case of leave of absence, the reason for granting it to be inserted in the certificate.

But in case any such subaltern officer or surgeon, shall by his commanding officer be permitted for any special cause or unavoidable necessity, to be absent during the whole or any part of such annual exercise, it shall be lawful for such subaltern officer or surgeon, to demand and receive the said annual allowance, in like manner as if he had attended, and the reasons for such absence, as well as the duration thereof, shall be truly specified in certificates (in lieu of those before mentioned) to be signed by the commanding officer, and to be transmitted to the lieutenant of the county, and also to the receiver general. *s.* 4.

If militia be not called out into annual exercise the subalterns and surgeons still to be entitled to allowance.

And in case any regiment, after the disembodying thereof, and before the days herein-after fixed for the half-yearly payment of the said annual allowances, shall not be called out for the annual exercise and training thereof, every subaltern officer and surgeon coming within the descriptions of this act, who shall have taken and subscribed the oath before mentioned, shall be

entitled to the said annual allowance, as if he had regularly attended the annual exercise and training, and as if a certificate of such attendance had been transmitted to the lieutenant, and also to the receiver general. *s.* 5.

Allowances to be paid without deductions.

And upon such certificates as aforesaid of such justice of the peace and commanding officer, or (where any regiment shall not have been called out to annual exercise), upon a certificate of any such justice of the peace only being produced to or received by the receivers general, such receivers general are topay to the said subaltern officers and surgeons, one moiety of the annual allowance on the twenty-fourth of *September* next, and the other moiety of the same on the twenty-fourth of *March* one thousand eight hundred and seven, without any deduction, out of any public monies in their hands, and to charge the same in their annual accounts. *s.* 6.

Subalterns and surgeons not attending when called upon to forfeit their claims.

And the subaltern officers and surgeons shall, at all times, be liable to serve in the regiments to which they belong, whenever the same shall be embodied, and called out upon actual service; and in case of neglect or refusal to attend when called upon, or in case any such subaltern officer or surgeon shall at any time wilfully neglect or refuse to attend, and perform his duty at the annual exercise as before directed, and at such other times, or for such other occasions, as may be required of him in pursuance of the laws now in force respecting the militia when disembodied, every such subaltern officer and surgeon shall, upon such neglect or refusal being certified to the lord lieutenant by the colonel or commandant, forfeit his claim to the said annual allowance, and shall also be considered as having resigned and vacated his commission. *s.* 7.

Allowances to be paid by receivers general on production of certificates;

The said annual allowances shall be paid to the persons entitled thereto, by the receivers general of the land tax, upon the production of the certificates, on or as soon after the twenty-fourth of *September* next, and the twenty-fourth of *March* one thousand eight hundred and seven, as may be practicable. *s.* 8.

but not to be paid while the militia is embodied.

But nothing in this act shall extend to entitle any subaltern officer or surgeon to the said annual allowance, during the time the militia to which he belongs shall be embodied. *s.* 8.

Allowances to extend only to a certain number.

Also this act shall not extend to more than *ten* lieutenants in any regiment consisting of more than ten companies; to more than nine lieutenants in any regiment consisting of more than eight and less than eleven companies; to more than eight lieutenants in any *regiment* consisting of more than six and less than nine companies; or to more than five lieutenants in any regiment, battalion, or corps, consisting of six or of a less number of companies, except where the companies consist of ninety private men each; in which case this act, and the benefits therein contained, may be extended to eighteen lieutenants in any regiment consisting of more than ten companies; to sixteen lieutenants in any regiment consisting of more than eight and less than eleven companies; to fourteen lieutenants in any regiment consisting of more than

six and less than nine companies; and to nine lieutenants in any regiment, battalion, or corps consisting of six or of a less number of companies. *s.* 8.

Senior lieutenants to have the preference, and the junior to succeed on vacancies.

In case in any regiment, battalion, or corps, at the time of disembodying thereof, there shall happen to be a greater number of lieutenants, coming within the descriptions of this act, than can be entitled to claim the benefits thereof, the senior lieutenants shall always be preferred, and shall be alone entitled to demand and receive the above-mentioned allowances, and the junior lieutenants shall succeed to such allowances in rotation as vacancies may happen among the said senior lieutenants from time to time. *s.* 9.

Continuance of act.

And this act shall continue in force until the twenty-fifth day of *March* one thousand eight hundred and seven, and no longer. *s.* 10.

Allowance to reduced adjutants and serjeant majors.

By 39 & 40 *Geo.* 3. *c.* 44. [continued by 46 *Geo.* 3. *c.* 20. *s.* 1. *c.* 2. until March 25, 1807.] In every county where any part of the militia shall have been disembodied in pursuance of the statute 39 & 40 *Geo.* 3. *c.* 1. (whereby a proportion of the militia were allowed to enter as volunteers in the regular forces,) the receivers general of the land tax, and other assessed taxes, shall pay the sums hereinafter expressed, to every *reduced adjutant* and *serjeant major*, as shall have served at least one year, and shall have obtained certificates of their good behaviour from their commanding officers; viz. to every reduced adjutant 3*s.* per day—to every reduced serjeant-major, 1*s.* per day. *s.* 1.

And the commanding officers of militia are to give to such as are entitled to the allowances, a certificate in writing, specifying the period to which they received pay, from which period their allowances are to commence. *s.* 2.

To be paid by the collectors of the assessed taxes.

Such certificates shall be indorsed with a certificate signed by the minister and churchwardens of the parish or place of the party's residence, and lodged with the receiver general; and such receiver general is forthwith to pay the full amount of the money due under this act, and within seven days after, to cause an order to be delivered to one of the collectors of the duties for the parish mentioned in the indorsement for the payment of the allowance, either weekly, monthly, or quarterly, as the person intitled may demand the same; and the said collectors are to pay the said allowances accordingly, taking receipts for the same; and they may, with the consent of the receiver general, retain in their hands sufficient monies for the payment of such allowances, for one quarter of a year next ensuing; and all such payments shall be allowed in the accounts of the collectors and receivers general. *s.* 3.

Removing out of the parish.

And as often as any adjutant, or serjeant major, shall change his residence, the order upon the collector shall be void; and to obtain a continuance of his allowance, he shall give notice of his change of residence to the receiver general, together with a like certificate as before required from the minister and

churchwardens; and such receiver general shall thereupon cause like order to be given to the collector of such other parish, for the continuance of such allowance. *s.* 4.

Out of the county.

And as often as such adjutant, or serjeant-major, shall change his place of residence into any other county, the receiver general shall, upon demand, deliver up the certificate of service, after indorsing thereon the time up to which the allowances shall have been paid; and the party shall be entitled to receive his allowance from the receiver general of such other county; and for obtaining and granting the same, such adjutant, serjeant-major, and such receiver general, and collector, shall proceed in like manner as is before directed on the first delivery of such certificate. *s.* 5.

Adjutants to make returns to the colonel.

Such reduced adjutant, or serjeant-major, shall at the time of his transmitting the certificate to the receiver general, and also when he shall change his place of residence, make a return to the commanding officer of the place at which he shall reside. *s.* 6.

May receive the allowance with other pay.

Every reduced adjutant, entitled to any allowance under this act, may receive such allowance, together with the pay of any other commission, or any other allowance allowed to be received by any adjutant, together with any pay or allowance to which he may be entitled as such adjutant. *s.* 7.

Exception.

But no reduced adjutant shall be entitled to receive such allowance under this act, who shall hold any office of profit, civil or military, under his majesty, other than as aforesaid. *s.* 8.

To remain liable

Every such adjutant, and serjeant-major, shall remain liable to serve in the militia, and shall join any regiment, battalion, or corps, whenever called upon by the commanding officer, either for the purpose of supplying any vacancy or whenever the militia shall be again augmented; and from the time of being again called into actual service, and becoming entitled to pay, or in case such adjutant shall be appointed captain of a company, or to any higher rank, or in case any such adjutant, or serjeant-major, shall neglect to make such return of his place of residence to the commanding officer, or shall neglect or refuse to join such militia, according to notice given to him for that purpose, unless prevented by sickness or other cause, to be allowed by the commanding officer, then the allowance granted by this act shall cease. *s.* 9.

Penalty on collectors not paying.

If any such collector shall refuse or neglect to pay such allowance, it shall be lawful for the adjutant, or serjeant-major, entitled thereto, to make a complaint of such neglect or refusal to *one justice of the peace*, and such justice shall cause such collector to come before him with the order for payment, and shall make such order for the punctual payment of such allowance then or to become due, as upon such enquiry he shall deem necessary; and if it shall appear to such justice, upon such complaint, that such collector hath unnecessarily, and without any good cause, wilfully refused or delayed the pay-

ment of such allowance, it shall be lawful for such justice to fine *instantèr* such collector in not exceeding 10*l.* without any further information than summons or process as aforesaid, and unless such fine shall be forthwith paid, to cause such fine and costs attending the same to be forthwith levied by distress and sale, which fine shall be paid to the adjutant, serjeant-major, or serjeant, whose allowance shall have remained unpaid, and the surplus (if any) of the money so levied shall be returned upon demand. *s.* 11.

Certificates not assignable.

No certificate under this act, nor any allowance, or part thereof, shall be assignable or assigned in law or in equity, in any way whatever, nor shall such allowance be receivable, or any part thereof received, under any power or disposition thereof, or any part thereof, nor otherwise than to the sole use and benefit of such adjutant, serjeant-major, or serjeant, whose receipt shall be a sufficient discharge. *s.* 12.

No fees payable.

And no fee or gratuity whatever shall be paid by any person entitled to any allowance under this act, for any thing done in relation thereto. *s.* 13.

## *XXI. Reduction of the Militia.*

Reduction of officers in the militia to take place from the youngest of each rank.

Whenever it shall be judged expedient to reduce the number of field officers, or of other officers in any regiment, battalion or corps of militia, the reduction of officers shall take place from the youngest of each rank respectively. 43 *Geo.* 3. *c.* 71. *s.* 4.

Reduced officers may succeed to vacancies.

And in case any officer being duly qualified shall be so reduced, such officer shall, notwithstanding such reduction, be competent to succeed to any vacancy which may occur of an equal rank with that which such officer filled in the time such reduction took place, or may fall back again into the post he quitted on his promotion, at his option, preserving his rank in the general line of the militia. 43 *Geo.* 3. *c.* 71. *s.* 4.

Militia to be gradually reduced to the original quota.

And the militia raised in the several counties shall be gradually reduced in the manner and subject to the restrictions therein contained to the quotas in the stat. 42 Geo. 3. c. 90, specified; and from and after such reduction shall have taken place, the numbers specified as the original quotas of such counties exclusive of any supplementary militia, shall be supplied, and continue to serve for each of such counties. 44 *Geo.* 3. *c.* 56. *s.* 10.

And the militia was allowed to be reduced to the original quotas specified as aforesaid, by the voluntarily enlisting of men from the militia into his majesty's regular forces and marines. 45 *Geo.* 3. *c.* 31. *

* This act having been in a great degree carried into execution, as

And no man shall be ballotted to serve in the militia of any county, in which the number of men actually serving shall exceed or amount to such original quota, or for supplying any vacancies that may be then existing or may thereafter arise, until the militia of such county be reduced below the original quota. 44 *Geo.* 3. *c.* 56. *s.* 11.

Balloting suspended.

*And as notwithstanding these acts the number of men serving in the militia in England still exceeds in the whole the number of militia required to be raised exclusive of the supplementary under the said act of* 42 *Geo.* 3. IT IS ENACTED by 46 *Geo.* 3. c. 30. that from and after the passing this act, no ballot for the enrolling any man to serve in the militia in England, or for supplying any vacancy which may arise therein, shall take place until the full end and term of two years after the passing of this act, viz. *July* 1806. *s.* 6.

And it shall be lawful for his majesty by any order signified by his secretary of state, to direct any number of officers, non-commissioned officers and corporals actually serving, at the time that any reduction of the number of the private men shall have taken place, or shall take place by the discharge of men for the purpose of enlisting into the regular forces and royal marines under 45 *Geo.* 3. *s.* 31, to be retained during the continuance of the present war, or for so long a time during the continuance thereof as his majesty shall think fit, as officers, non-commissioned officers and corporals, although by reason thereof the number shall by such reduction of the number of private men, exceed the proportion prescribed for any regiment, battalion, or corps, by any act in force; and all such officers, non-commissioned officers and corporals so retained, shall be entitled to such pay, enrolments and advantages as the others are entitled to. 45 *Geo.* 3. *c.* 91. *s.* 1.

His majesty may direct any number of officers serving in the militia at the time of its reduction to be returned on full pay.

And the officers so retained, who shall exceed the proportion of officers prescribed for any regiment, battalion, or corps, shall, being duly qualified, succeed to vacancies therein according to their respective ranks, and beginning with the oldest officer. *s.* 2.

And such officers may succeed to vacancies.

Also where the establishment of field officers shall previously to such reduction, have consisted of one colonel, two lieutenant colonels, and two majors, and by reason of such reduction one colonel, one lieutenant colonel and two majors shall be allowed on the establishment thereof, and one of such majors shall at any time after such reduction have died or resigned, then his majesty by any order as aforesaid, may direct that the lieutenant colonel who in consequence of such reduction, would have been retained as a supernumerary lieutenant colonel, shall remain

Regulations respecting field officers.

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appears by the next stat. 46 Geo. 3. it is not necessary to insert the provisions thereof, which are of a mere military nature, in this place.

upon the establishment, with the full rank of lieutenant colonel, but nevertheless with the pay, enrolments and advantages of major. *s.* 3.

His majesty may direct lieutenants by precept to constables to give notice to persons to make returns according to recited act.

*And it is expedient his majesty should be empowered to direct that new lists should be forthwith made out and returned, under the said act, of persons liable to serve, and that provision should be made for the altering and amending such lists ;*

It is also enacted, That it shall be lawful for his majesty, at any time after the passing of this act, in case it shall appear to him to be necessary, to direct the lord lieutenants or in their absence the vice lieutenants, or three deputy lieutenants, by precept under his or their hand and seal, to require the high constable of each subdivision to direct, by warrant under their hands, the several constables of every parish, to give or leave notice, within seven days after the receipt of such order, to or with all occupiers of houses and apartments within the limits of their authorities, to make returns according to the provision of the said act; and such constables shall, within ten days after the delivery of such notices, make out lists, and give notice of such lists in manner therein directed, by affixing copies of such lists in conspicuous places, according to the provisions of the said act, and give notices as therein directed of the days, times, and places for hearing appeals on such lists. 46 *Geo.* 3. *c.* 20. *s.* 1.

Requiring parochial officers to aid and assist constables in making out lists.

And the ministers and churchwardens, and overseers of the poor, and other parochial officers in every parish, shall aid and assist by every lawful means in their power, the constables, tythingmen, headboroughs, and other officers, in making out the lists required to be returned by them under this act, or any act relating to the militia, in their respective parishes. 46 *Geo.* 3. *c.* 20. *s.* 4.

Meetings to be held for hearing appeals and correcting lists.

And if any such lists shall be required under this act, the lord lieutenants, vice or deputy lieutenants shall order that subdivision meetings shall be appointed to be held at such times and places as they shall direct, not exceeding one month after the precepts to the high constables shall have been so issued for the purpose of hearing appeals thereon, and for correcting such lists; and such subdivision meetings shall thereupon assemble and hear such appeals and correct such lists ; and the clerks of such subdivision meeting shall, within seven days after such meeting, make out correct abstracts of such lists, and transmit the same to the clerks of the general meetings, on pain of forfeiting for any neglect therein one hundred pounds ; and every clerk of general meetings shall, upon the receipt of such abstracts, within seven days, make out correct abstracts thereof, and return the same to his majesty's privy council, on pain of forfeiting for every neglect therein two hundred pounds. 46 *Geo.* 3. *c.* 20. *s.* 5.

# MILLS.

BY ancient *custom* and *prescription*, the tenants and other persons resident in a particular place, may be bound to grind their corn at a certain mill. *Fitz. Nat. Brev.* 122. M. *Comyn's Dig. tit. Droit.* (H.)

Persons may be bound by prescription to grind their corn at a particular mill.

And if any of them go to a mill, and withdraw their suit, (their *secta, a sequendo*) from the ancient mill, this is not only a damage, but an injury to the owner; because this prescription might have a very reasonable foundation; for it might have been erected by the ancestors of the owner for the convenience of the inhabitants, on condition, that when erected, they should all grind their corn there only. 3 *Black. Com.* 235.

And for this injury the owner shall have a writ *de secta ad molendinum*, commanding the defendant to do his suit at that mill, as he ought, and hath been accustomed to do, or shew good cause to the contrary; in which action the validity of the prescription may be tried; and if it be found for the owner, he shall recover damages against the defendant. *Fitz. Nat. Brev.* 123.

But besides this special remedy to compel the specific performance of the service due by custom, an *action on the case* will also lie, to repair the party injured in damages. 3 *Black. Com.* 235.

Nuisances to mills.

Also if a man have a mill by prescription upon his soil, and another erect a new mill upon his own soil by which the stream to the other's mill is straitened or stopped, or by which too great abundance of water comes thereto, by which his mill is endamaged, so that it cannot grind so much as it is wont, this is a nuisance to the old mill, for which the owner may bring a special action on the case: and so it is if the water be diverted, or stakes put therein. 16 *Viner's Abr.* 26.

So also where one erected a house so high that the wind was stopped from certain ancient windmills, it was adjudged that the house should be broken down. *Winch*, 3. 16 *Viner*, 27.

Toll for grinding.

It is said by *Dalton*, that the miller ought to take but one quart for grinding of one bushel of hard corn, but if he fetch and carry back the grist to the owner, he may take two quarts of hard corn; and this hard corn is intended of wheat, rye, meslin (which is wheat and rye mixed); and that for malt, the miller shall take but half so much toll as he taketh for hard corn; that is, one pint in the bushel; for that malt is more

easily ground than wheat or rye; yet if the miller do fetch to his mill, and carry back the malt to the owner's house, then the miller also shall have double toll. *Dalton*, c. 112. s. 20.

But it was said in the case of *the King* v. *Burdett*, *Hil.* 8 & 9 *Will.* 3, that the toll of an *ancient mill* depends upon immemorial custom; and when that custom has ascertained the toll, if the miller takes more than the custom warrants, it is extortion. 1 *Ld. Raym.* 149.

And in the case of *new mills*, the miller is not restrained to any certain toll; and the persons who will have their corn ground there, must comply with the miller's demands; and whatsoever he takes, it is not extortion, because it is the voluntary agreement of the parties. 1 *Ld. Raym.* 149.

And yet by an ancient ordinance it is directed, that *the toll of a mill shall be taken according to the custom of the land, and according to the strength of the water-course, either to the twentieth or four and twentieth corn; and the measure of the toll shall be agreeable to the king's measure; and toll shall be taken by the rase, and not by the heap: And if the farmers find the millers their necessaries, they shall take nothing besides their due toll, and if they do otherwise, they shall be grievously punished.* See an order for bakers, &c. cap. 4. inserted in the edition of the Statutes at Large, after the stat. 18 *Ed.* 2.

Miller stealing corn;

If a miller who has corn to grind, *take out part* with intent to steal it, it is felony. 1 *Hawk. c.* 33. *s.* 5.

or changing it.

And it hath been determined that if a miller *change* the corn delivered to him to be ground, and give bad corn instead of it, he may be punished for the cheat by the way of indictment (I); for being done in the way of trade, it is an offence of a public nature. 1 *Sess. Cas.* 217.

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(I) Form of an indictment against a miller for fraudulently returning meal other than the produce of the corn sent to him to be ground. *Cr. Cir. Com.* 435.

Staffordshire. { *The jurors for our lord the king upon their oath present that* Z E, *late of the parish of* W *in the county of* S, *miller, on the* 20*th day of* August *in the* 10*th year of the reign of our sovereign lord* George *the third, king of* Great Britain, &c. *and long before, and continually from thence until the day of the taking of this inquisition, was possessed of, and did keep, and still is possessed of, and doth keep, a certain common and public mill, called the Windmill, situate and being at the parish aforesaid, in the county aforesaid, for the purpose of grinding wheat and other corn therein; and during all the time aforesaid caused to be ground divers large quantities of wheat and other corn, of and belonging to divers liege subjects of our said lord the king, in*

By 36 *Geo.* 3. c. 85, every miller, or other person keeping a mill for the grinding of corn, shall, from and after 1 *July* 1796, have in such mill a true and equal balance, with proper weights, according to the standard of the exchequer; and any person

A balance of weights to be kept in corn mills.

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*the said mill, in consideration of certain tolls or rewards received, had, and taken by him the said* Z E, *of and from the said subjects, out of such wheat and corn on those occasions; and that he the said* Z E, *on the said 20th day of August, in the year aforesaid, at the parish aforesaid, in the county aforesaid, did receive of and from one* G L, *a liege subject of our said lord the king, twenty bushels of good, sound and wholesome wheat of the goods and chattels of him the said* G L, *of the value of* 4l. *of lawful money of* Great Britain, *to be ground at and in the said mill of him the said* Z E, *for a certain reasonable toll to be had, received, taken and deducted by him the said* Z E, *from and out of the said twenty bushels of wheat, on account of, and as a reward for grinding the residue thereof, at and in the said mill; by reason whereof he the said* Z E *should and ought to have delivered unto the said* G L *all the true, real, and proper meal, which the aforesaid residue of the said twenty bushels of wheat should yield and produce after grinding the same as aforesaid; and the jurors aforesaid, upon their oath aforesaid, do further present, that the said* Z E *being an evil disposed person, greedy and eager of dishonest lucre and gain, and wickedly, unlawfully, falsely, fraudulently, and deceitfully, contriving and intending to cheat and defraud the said* G L *of his goods and chattels, afterwards, to wit, on the 21th day of August, in the 10th year aforesaid, with force and arms at the parish aforesaid, in the county aforesaid, unlawfully, unjustly, fraudulently, and deceitfully, did deliver unto him the said* G L *a certain quantity of meal and bran mixed, to wit, nineteen bushels of meal and bran mixed, other and different than the true, real and proper meal, bran or produce of and coming from the aforesaid residue of the said twenty bushels of wheat, so received by him the said* Z E *of and from the said* G L *as aforesaid, after having taken, deducted, accepted, and received, to the use of him the said* Z E, *one bushel, parcel of the said twenty bushels of wheat, as and for such toll or reward, for the purpose and on the occasion in that behalf aforesaid; and then and there, to wit, on the same day and year last aforesaid, at the parish aforesaid, in the county aforesaid, did unlawfully, falsely, fraudulently, and deceitfully, pretend and intimate to the said* G L *that the said quantity of meal and bran, so delivered by him the said* Z E *to the said* G L *as aforesaid, was good, true, sound and wholesome meal and bran, produced and yielded from, and parcel of the aforesaid residue of the said twenty bushels of wheat so re-*

appointed by virtue of the act 35 *Geo.* 3. *c.* 102, *for the more effectual prevention of the use of defective weights and of false and unequal balances*,* to examine weights and balances, shall examine such balances and weights, and proceed with respect to them in the same manner as is provided in the said act, with respect to weights and balances: and every miller, or other person, in whose mill shall be found no balance or weights, shall forfeit not exceeding 20*s.*; and every miller, or other person in whose mill shall be found any weight not being according to the standard in the exchequer, or any false or unequal balance; and all persons obstructing, hindering, or resisting such person in viewing and examining the same, shall be liable to be proceeded against, and shall forfeit the like penalties, as any person committing the like offences against the provisions of the said act would be liable to. *s.* 1.

Millers to weigh corn, if required before and after ground.

And every person who shall bring any corn to any mill to be ground, may require the miller to weigh, in his presence, such corn before it shall be ground, and after it shall be ground may require him to weigh the produce; and if he refuse, he shall forfeit not exceeding 40*s.* *s.* 2.

* See title WEIGHTS and MEASURES.

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*ceived by him the said* Z E, *for the purpose in that behalf aforesaid; whereas in truth and in fact, the said quantity of meal and bran, so delivered by the said* Z E *to the said* G L *as aforesaid, was not the produce or quality of the said wheat so received by him the said* Z E *of the said* G L, *for the purpose in that behalf aforesaid; and whereas in truth and in fact, the said quantity of meal and bran so delivered by the said* Z E *to the said* G L *as aforesaid, at the time of such delivery of the same was, and still is, a compound and mixture of rye meal, barley meal, and bran, yielded and produced from rye and barley; and whereas in truth and in fact, the said quantity of meal and bran so delivered by the said* Z E *to the said* G L *as aforesaid, at the time of such delivery of the same, was and still is musty, sour, damaged, and unwholesome, and wholly unfit and improper to be used for the food and sustenance of the said* G L *and his family, or of any other person whatsoever, and therefore of little or no use or value to the said* G L; *and whereas in truth and in fact he the said* Z E *hath not in any other manner whatsoever hitherto accounted with the said* G L *for the said twenty bushels of wheat, or made or given him any other satisfaction for the same, to the great damage, impoverishment, injury, and deception of the said* G L, *to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.*

And every miller shall deliver, if required, the whole produce of such corn in weight, allowing for the diminution in weight that shall have been caused by the waste in grinding, and by taking toll, in cases where toll is hereinafter allowed to be taken; and if such corn shall be dressed into flour, then the whole produce in weight, allowing for the diminution in weight that shall have been caused by the waste in grinding and dressing, and by taking toll as aforesaid; and if such corn, on being weighed after grinding, or after grinding and dressing, shall appear to weigh less than such full weight, after allowing for the diminution aforesaid, such miller shall, for every bushel of corn so deficient in weight, forfeit not exceeding 1*s.* and also treble the value of such deficiency. *s.* 3.

Millers to deliver the whole produce of corn when ground, if required, allowing for waste and toll.

And in cases where toll is allowed to be taken, such quantity of corn as the miller shall be entitled to deduct by way of toll for grinding the same, shall be deducted before the corn shall be put into the mill. *s.* 4.

How toll to be deducted.

And no miller, or person keeping a mill, shall demand or take any part of the corn, or of the produce thereof, for toll; but in lieu thereof he shall be entitled to demand payment in money; and every miller or other person as aforesaid, who shall demand or take any part of the corn, or of the produce thereof, by way of toll, shall forfeit not exceeding 5*l.* But if the person shall not have money to pay for grinding, the miller, with the consent of such person, may take such part of the produce of such corn as will be equal to the money price expressed in the table of prices for grinding, as hereinafter required. *s.* 5.

No corn but money, to be taken for toll, except where the party has no money,

Also nothing in this clause shall extend to the ancient mills, called *Soke Mills*, or to such other ancient mills where the right and obligation of the possessors of the same to grind corn for particular persons, or within particular districts, and to take a fixed toll, have been established by ancient custom, but such mills shall continue to take toll in the same quantity, and in the same manner as they have been accustomed to do. *s.* 5.

or there be a right to take toll.

And every miller shall cause to be put up in some conspicuous place in his mill, and renew when necessary, in fair and legible characters, a table of the prices in money, or of the amount of toll, for which the several operations of his mill are to be performed: and if he shall omit to set up and keep fair and legible such a table, he shall forfeit not exceeding 20*s.* *s.* 6.

Millers to put up in their mills a table of prices, on penalty of 20*s.*

Nothing in this act shall extend to any mills kept for the private use of the proprietor or occupier only. *s.* 7.

The act is not to extend to private mills.

Every penalty imposed by this act shall be recoverable before one justice, upon conviction or confession of the party, or on the oath of one witness, if the information be laid be-

Recovery and application of penalties.

fore one justice, within ten days after the offence committed. *s.* 8, 9.

And every such conviction may be made in the following form:

Form of conviction.

to wit. { *Be it remembered, That on the* —————— *day of* —————— *in the year* —————— A. B. *was, upon the complaint of* C. D. *convicted before* —————— *of the justices of the peace for* —————— *in pursuance of an act passed in the thirty-sixth year of the reign of his majesty king* George *the Third, for* [*or,* as the case may be]. *Given under* —— *hand and seal the day and year above written.*

And shall be certified to the next general quarter sessions, there to be filed. *s.* 10.

And such penalty shall be levied by distress and sale of the goods of the person offending; and the penalty, when levied, shall be paid one moiety to the informer, and the other to the poor of the parish, and the overplus (if any), after the costs of such conviction and distress and sale are deducted, shall be returned to the party offending; and in case such distress cannot be found, and such penalty and costs shall not be forthwith paid, it shall be lawful for such justice to commit such offender to the common gaol, or house of correction, for not exceeding one month,* unless the said penalty and costs shall be sooner paid. *s.* 8.

Appeal.

But any person aggrieved by the judgment of such justice may, upon giving security to the amount of the penalty, together with such costs as shall be awarded in case such judgment shall be affirmed, appeal to the justices at the next general quarter sessions, who are finally to hear and determine the same; and in case the judgment shall be affirmed, the sessions may award such costs, as to them shall seem meet. *s.* 8.

Judgments not removable.

And no such judgment or conviction shall be removeable by *certiorari* into any court whatsoever. *s.* 8.

*For the punishment to which persons guilty of* destroying mills *are liable, see the title* FELONY (without clergy, § MILLS).

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* This is a lunar month.

# MINES.

BY 13 *Geo.* 2. *c.* 21, If any person shall wilfully and maliciously divert or cause to be diverted, water from any river, brook, water-course, channel, or land-flood, or convey or cause to be conveyed, water into any coal, work-mine, pit, or delph of coal, or into any subterraneous cavities or passages, or make any subterraneous cavities, with design thereby to destroy or damage any coal work, mine pit, or delph, belonging to any other person, or wilfully and maliciously destroy or obstruct any sough, or sewer (*which has been a sough or sewer*, in common *for* 50 *years*), made for draining any coal work, mine, pit, or delph, or attempt any such mischievous practice or assist therein; every such person shall for every offence forfeit to the party aggrieved, treble damages, and costs of suit, to be sued for by action in any court at *Westminster*. s. 1.

Persons drowning coal pits to pay treble damages and costs.

But nothing in this act shall restrain any person, being the owner of any sough, drain, or sewer, from destroying, obstructing, or diverting any such sough, drain, or sewer, as he may now lawfully do. *s.* 2.

Except such coal pits as are their own and not common.

And by 9 *G.* 3. *c.* 29, If any person shall wilfully or maliciously set fire to, burn, demolish, pull down, or otherwise destroy or damage any fire engine, or other engine, erected for draining water from colleries, or coal mines, or for drawing coals out of the same; or for draining water from any mine of lead, tin, copper, or other mineral; or any bridge, waggon-way, or trunk erected for conveying coals from any colliery or coal mine or staith, for depositing the same; or any bridge, or waggon-way, erected for conveying lead, tin, copper, or other mineral, from any such mine; or shall cause or procure the same to be done, he shall be guilty of felony, and be transported for 7 years. Provided the prosecution be commenced in eighteen months. *s.* 3, 4.

Demolishing engines, waggon ways, bridges, &c. belonging to mine.

Prosecution to be in eighteen months.

By 39 & 40 *Geo.* 3. *c.* 77, If any person shall after 1st. *Sept.* 1800, wilfully and maliciously pull down, fill up, or begin, or attempt to pull down or fill up, any airway, waterway, drain, pit, level, or shaft,—or damage or destroy any rail-way, tram road, or other road leading to or from, or intended to lead to or from, ANY COAL OR OTHER MINE WORK;—or if any person, (not having or *bona fide* claiming a right to possess or work the same, shall wilfully and unlawfully cut, dig, raise, take, or carry away any *coal, culm, or other mineral*, from any bed, band, vein, or mine, lying in any waste, open, or uninclosed lands, or shall wilfully and unlawfully enter into any level, pit,

Destroying or damaging mines or roads to or from the same, or taking the substance thereof.

or shaft, with an intent to dig, cut, raise, take, or carry away therefrom any coal, culm, or other mineral,—or shall aid, abet, assist, hire, or command any person to commit any such offence, then such person shall be adjudged to be guilty of a misdemeanor and imprisoned for not exceeding six months. *s.* 1.

Not to extend to damage underground.

But nothing in this act shall extend to any trespass or damage done underground by any owner of any adjoining coal or other mine, in working the same, or by any person employed in such working. *s.* 2.

Miners working contrary to their agreement,

or not fulfilling their contracts.

If any person making any bargain, or entering into any contract or agreement in writing, shall wilfully, and to the prejudice of the owner, raise, get, or work, or cause to be raised, got, or worked, any coal, culm, iron stone, or iron ore, in a different manner to his stipulations in respect thereto, and contrary to the directions and against the will of the owner or his agent—or shall desist or refuse to fulfil the engagements entered into, every person so offending and convicted either by confession or upon the oath of one witness before one justice of the peace, shall, on complaint of the owner or his agent, and not otherwise, forfeit such sum not exceeding 40*s.* as to such justice shall seem meet, together with the charges previous to and attending such conviction, to be ascertained by such justice, and upon non-payment thereof, such justice shall commit the offender to the common gaol for not exceeding six months, or until the penalty and charges shall be paid; and upon such conviction, every such bargain, contract or agreement, shall become void. *s.* 3.

Fraudulently walling or stacking produce of mines.

If any person shall wall or stack, or cause to be walled or stacked, any coal, iron stone, or iron ore, in any false or fraudulent manner, with an intent to deceive his employer; or if any person shall take and remove any iron stone or iron ore, with intent to defraud the person who shall have raised the same, and shall be thereof convicted, either by confession or upon the oath of one witness, before one justice of the peace, such justice may commit such person to the house of correction or common gaol for not exceeding three months. *s.* 4.

Stealing coals or implements not exceeding 5s first offence.

If any person shall steal or take away any coal, culm, or coak, wood, iron, ropes, or leather, not exceeding the value of five shillings, from any bank, yard, wharf, or other place, belonging to any manufacturer or coal dealer, or off or out of any boat, barge, waggon, cart, or other carriage, or shall wilfully break, destroy, or damage any waggon, cart, or other carriage, used for carrying coal, culm, coak, iron, or iron stone, or shall steal, break, destroy, damage, or embezzle any tools or implements used for cutting or getting coal, culm, or other minerals, not exceeding the value above mentioned, and shall on complaint of the owner or his agent, be thereof convicted,

either by confession or the oath of one witness before one justice of the peace, every person so offending shall for the first offence forfeit such sum not exceeding 10*s*. as to such justice shall seem meet, over and above the charges previous to and attending such conviction, to be ascertained by such justice, and upon non-payment thereof such justice shall commit the offender to the house of correction, there to be kept to hard labour for one month, or until the penalty and charges shall be paid. *s.* 5.

Second offence. And if any person so convicted shall be guilty of the like offence a second time, and shall be thereof convicted in like manner, such person shall forfeit such sum, not exceeding 20*s*. as to such justice shall seem meet, over and above the charges previous to and attending such conviction, to be ascertained by such justice, and upon nonpayment thereof such justice shall commit the offender to the house of correction, there to be kept to hard labour for three months, or until the penalty and charges shall be paid. *s.* 6.

Third offence. And if any person so convicted shall be guilty of the like offence a third time or oftener, and shall be thereof convicted in like manner, such person shall forfeit such sum, not exceeding 40*s*. as to such justice shall seem meet, over and above the charges previous to and attending such conviction, to be ascertained by such justice, and upon nonpayment thereof such justice shall commit the offender to the house of correction, there to be kept to hard labour for six months, or until the penalty and charges shall be paid; but no person convicted under this act shall be liable to be prosecuted under any other law. *s.* 5.

Application of forfeitures. The forfeitures shall be distributed between the informer and the overseer of the parish where the offence shall be committed for the use of the poor, in such proportion as the justice shall think fit. *s.* 6.

Parishioners may be witnesses. In all informations and other proceedings the evidence of the inhabitants of the parish shall be allowed. *s.* 6.

And the justice may cause the conviction to be drawn up in the following words;

Form of conviction. *Be it remembered, That on* —— *the day of* —— *in the year of our Lord* —— A B. *having been brought before me* [or *having been duly summoned, and not having appeared*, as the case may happen] *is on his own confession*, [or, *on due proof*, whichever may be the case] *convicted before me*, C D. *one of his majesty's justices of the peace for the county of* —— *for that he the said* A. B. *on the* —— *day of* —— *at* —— *in the said county of* —— *did* [here specify the offence according to the fact, and following the words of the act, and whether the same is the first, or what other offence,]

*against the form of the statute in that case made; and I do adjudge him to forfeit and pay for the said offence the sum of ——— and also the further sum of ——— for the charges of this conviction.* Given under my hand and seal [or our hands and seals] the day and year first aforesaid. *s.* 8.

Limitation of drosecutions.

But no person shall be prosecuted, unless such prosecution be begun within nine calendar months after the offence. *s.* 9.

Appeal.

Also any person aggrieved by any order of any justice, except any order of commitment, may, within three calendar months, complain to the justices at the general quarter sessions, who shall either hear and determine such complaint at such general quarter sessions, or if they think proper, adjourn the hearing thereof to the next general quarter sessions; and if they see cause may quash any conviction, or mitigate any forfeiture, and may award costs to either party or order any money to be returned which shall have been levied, and shall also award such further satisfaction to be made to the party injured as they shall judge reasonable. *s.* 10.

No certiorari.

But no proceedings shall be quashed for want of form, or removed by *certiorari* or any other writ. *s.* 10.

*Misadventure. See* HOMICIDE.

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# MISDEMEANOR.

A MISDEMEANOR, is an act committed, or omitted, in violation of a public law, either forbidding or commanding it. *4 Black. Com.* 5.

This general definition comprehends both crimes and misdemeanors; which properly speaking are mere synonymous terms; though in common usage the word *crimes* is made to denote such offences as are of a deeper and more atrocious dye; while smaller faults and omissions of less consequence are comprized under the gentler names of *misdemeanors* only.* 4 *Black. Com.* 5.

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* For the punishment to be inflicted for inferior offences of this description, see p.      supra.

# MISNOMER AND ADDITION.

UNDER this title it will be proper to consider what certainty the law requires in the description of parties in judicial proceedings, and what the effects and consequences are, of an omission or irregularity in this respect.

*I. What names and additions are required by law.*

*II. The manner of taking advantage of and pleading a misnomer or want of addition, and the effect thereof.*

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### *I. What names and additions are required by law.*

If the christian name be wholly mistaken, this is regularly fatal to all proceedings. Misnomer.

And a writ of appeal may be abated upon the exception or plea of the party, for a misnomer, if there be a mistake in the writ or declaration as to the name of baptism, or *surname*, of the appellant, or appellee, and the appellee before imparlance plead such matter in abatement; and it seems also to have been holden, that if the appellant after imparlance confess that he hath brought his appeal by a wrong name, the writ shall be abated; but if one who is usually known and called by the surname of *B* be so named in the appeal, and the appellee plead that his name is *C* and not *B*, and the appellant reply that the appellee is, and at the time of the purchase of the original, was as well known by the name of *B* as by the name of *C*, and this be confessed, and found for him, it avoids the plea of the misnomer. 3 *Hawk.* *c.* 23. *s.* 103. In appeals.

But a person *cannot take advantage of a mistaken surname in an indictment*, either by plea in abatement or otherwise, notwithstanding such surname have no affinity with his true one, and he was never known by it; and in this respect an indictment differs from an appeal, whereof it is certain that a misnomer of a surname may be pleaded in abatement, as well as any other misnomer whatsoever. 2 *Hawk.* *c.* 25. *s.* 68. Indictments.

However, every other misnomer of the defendant, except that of the surname, is as fatal in an indictment as an appeal,

for a misnomer of the defendant's name of baptism may be pleaded in abatement of an indictment. 2 *Hawk. c.* 25. *s.* 69.

Outlawries.

Any outlawry whatsoever may be avoided by a defendant's coming in upon the *capias utlagatum*, and pleading a misnomer either of the name of addition in the writ, &c. as by showing that whereas he is called by such a name of baptism, or surname, that he hath been always known by a different one and not by that in the writ, &c. 2 *Hawk. c.* 90. *s.* 9.

Additions.

It seems that the common law in no case required any other description of a person, than by his christian name and surname, unless he were of the degree of a knight, or of some higher dignity; but the names of dignity were always required, being marks of distinction imposed by public authority, which make up the very name of the person to whom they are given; and they are of two sorts, 1st, such marks of distinction as exclude the surname, so that the persons may not seem to be of any common family; and such are the names of earls, dukes, and like persons. 2dly, such marks of distinction as are also imposed by the supreme power, and parcel of the name itself, but do not exclude the surname, such as knight, baronet, or the like, and these marks of distinction were always to be made use of as part of the same in all legal proceedings: and so curious was the law herein, that if a plaintiff in any action gained a new name of dignity, pending a writ, he made it abateable; but this inconvenience was remedied by 1 *Ed.* 6. *c.* 7. *s.* 3. by which it is enacted, *that if any plaintiff, in any manner of action, shall be made a duke, archbishop, marquis, earl, viscount, baron, bishop, knight, justice of either bench, or serjeant at law depending the same action, that such action for such cause shall not be abateable or abated* *, 2 Hawk. c. 23. s. 104.

In the time of *Hen.* 5, it was perceived, that the christian and surname were not sufficient denominations of persons, and did not sufficiently avoid the confusion that might happen by the mistake of persons; and that an innocent person might, upon a process of execution, be distrained upon, having the same name with the real defendant. 3 *Bacon's Abridg.* 617, 618.

Therefore to prevent the inconvenience of troubling one person for another, it is enacted by 1 *Hen.* 5. *c.* 5, *That in every original writ of action personal, appeals and indictments, and in which the exigent* † *shall be awarded, to the names of the*

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* But it hath been holden, that the dignity of a baronet is not within the statute, because there was no such dignity at the time of the making of it. 1 *Siderfin*, 40. *Litt. Rep.* 81. *Cro. Car.* 104.

† If a defendant absconds, and it is thought proper to pursue him to an outlawry, after issuing the writs of *capias* and *non est inventus*

*defendants* in such *writs original, appeals and indictments, additions shall be made for their estate or degree, or mystery, and of the towns or hamlets, or places and counties, of the which they were or be, or in which they be or were conversant; and if by process upon the said original writs, appeals or indictments, in the which the said additions be omitted, any outlawries be pronounced, that they be void, frustrate and holden for none, and that before the outlawries pronounced, the said writs and indictments shall be abated, by the exception of the party wherein the said additions be omitted.*

What is a sufficient addition of the estate or degree.

Where one, who is neither by birth, office, creation or reputation an esquire or gentleman, is named, with either of these additions; or where a gentleman by birth, who follows a trade or husbandry, is named with the addition of the trade or husbandry, and not of gentleman‡; or where a peer who has more than one name of dignity, is not named by the most noble; or where a gentlewoman is named spinster, or a yeoman is named gentleman, and such matter is pleaded in abatement, and found for the person who pleads it, the writ shall abate. 2 *Inst.* 699. 2 *Hawk. c.* 23. *s.* 103.

And it hath been adjudged to be a good plea in abatement to a writ or indictment against one by the name of *J S*, knight, that he is a baronet and no knight. *Cro. Car.* 371.

So where a person was sued as a baronet, and pleaded in abatement, that at the time of the bill purchased he was, and yet is a knight and baronet; and because he was not called knight as well as baronet he prayed judgment, &c. and upon demurrer to his plea, the court were of opinion that it was good. *Carthew*, 14. *Comberbach*, 65.

So if a man be impleaded by the name of *F S*, where he is garter king at arms: this is not good, because it is not only a name of office, but of dignity and grant, made to him by the words *creamus, coronamus, et nomen imponimus, &c. Leonard*, 249. *Cro. Eliz.* 542. See also *Strange*, 850.

A bishop may be described by the name of his bishoprick

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being returned by the sheriff upon all of them, then a writ of *exignat* or *exigi facias* may be sued out, which requires the sheriff to cause the defendant to be proclaimed, required, or exacted, in five county courts successively, to render himself; and if he does, then to take him, as in a *capias*; but if he does not appear, and is returned *quinto exactus*, he shall be then outlawed by the coroners of the county. 3 *Black. Com.* 283. See also title OUTLAWRY.

This act therefore extendeth only to cases where process of outlawry lieth.

‡ But in the case of *Smith* v *Mason*, reported in 8 *Mod. p.* 1, 2 *Strange* 816, and in *Lord Raymond's Reports*, 1542, it was determined that a trader may be sued by his degree, or by his trade; and if by his degree, the writ shall not abate unless he shews he has an higher degree.

without the addition of his surname; but a parson must be impleaded by christian and surname, and not *John* parson of *D*, because bodies politic are founded by public authority to political ends; therefore the bishop, the superintendant of the diocese, is made a body politic to subserve all the purposes of government in the care of religion, and it is not thought necessary to give every person such a capacity. 2 *Inst.* 666.

A bishop of an Irish diocese may be as well described by the addition of his bishoprick, as an English bishop may by the addition of an English one; but no one can be well described by the addition of a temporal dignity in *Ireland* or any other nation besides our own, because no such dignity can give a man an higher title here than that of an esquire. 2 *Inst.* 667.

The degree of a serjeant at law is certainly a good addition, and so, as is generally holden, is a degree in either university; yet a doctor in divinity may be described by the addition of clerk as well as by that of doctor. 2 *Inst.* 668. *Theloal. b.* 6. *c.* 15. *s.* 13.

Gentleman or esquire are either of them good additions for the estate and degree of a man, gentlewoman for that of a woman, and labourer are also good additions for the estate and degree of a man, but not for that of a woman, and widow, single woman, wife of *J S*, spinster, are good additions of the estate and degree of a woman; and, as some say, spinster is a good addition for the estate and degree of a man. 2 *Hawk. s.* 23. *s.* 111.

But burgess, and citizen, and servant, are all of them too general, and therefore not good additions of the state or degree either of a man or woman. 2 *Hawk. c.* 23. *s.* 112.

And if several defendants, of different names, have the same addition, it is safest to repeat the addition after each name, applying it particularly to every one of them; and where a father hath the same name and the same addition with a defendant, being his son, the writ is abateable, unless it add the addition of *the younger* to the other additions; but where the father is alone the defendant, it is said that there is no need of the addition of *the elder*. And if the son be *in the custody of the marshal*, and so declared against, it is said that the count is good without the addition of *the younger*, unless the father of the same name and addition be also in the custody of the marshal. *Salk. Rep.* 7. *pl.* 16. 2 *Hawk. c.* 23. *s.* 106.

It is a *fatal* fault *to apply such additions to the name which come under the alias dictus* only, and not to the first name: but it is said not to be material whether any addition be put to the name which comes under the *alias dictus* or not, because what is so expressed is not material. 2 *Hawk. c.* 25. *c.* 70.

This point was fully recognized in *Semple's* case at the *Old Bailey*, *June* sess. 1786, where the indictment stated that *J. G.*

*Harrold* otherwise *Semple*, otherwise *Kennedy*, LABOURER, one chaise, &c. feloniously did steal, &c. *Before the prisoner had pleaded*, it was moved to quash the indictment on the ground of informality; *the addition being placed after the alias dictus, and not after the first name*. And THE COURT, upon the authority of *Staundford's P. C.* 68. 2 *Hale* 177. and 2 *Hawk. c.* 25. *s.* 70. directed the indictment to be quashed, and the prisoner to be detained till the next session. *Leach's cases in Crown Laws, case* 155. *p.* 355.

The additions of the estate, *degree and mystery* of the party are not sufficient, unless they be the same which he had at the time of the writ; and in this respect such additions differ from that of place, which is sufficiently shewn by naming the defendant late of such a place. 2 *Hawk. c.* 23. *s.* 107.

Also such addition must be expressed in such manner, that it may plainly appear to refer to the party; and therefore it is not well expressed by the addition of his mystery, naming him son of *A*, of *B*, butcher, because butcher refers to *A* rather than to the son. 2 *Inst.* 670. 2 *Hawk. c.* 23. *s.* 108. 2 *Hale's Hist.* 177.

The word *mystery* includes all lawful arts, trades, and occupations; and if one, under the degree of a gentleman, have divers of such arts, trades, or occupations, he may be named by any of them. 2 *Inst.* 668. What is a good addition of the mystery.

The following additions of this kind are said to be clearly good: husbandman, merchant, broker, taylor, point maker, smith, miller, carpenter, cook, brewer, baker, butcher, parish clerk, mercer, fishmonger, dyer, schoolmaster, scrivener, and such like. 2 *Hawk. c.* 23. *s.* 114. 2 *Hale's Hist.* 176.

And the following insufficient: maintainer, extortioner, thief, vagabond, heretick, common informer, and such like. 2 *Hawk. c.* 23. *s.* 115.

But the following additions of this kind are said to be questionable, viz.

1st. The addition of farmer, which seems to be an insufficient addition, because if any mystery be implied in the notion of it, it is that of husbandry, of which husbandman is the proper addition. 2 *Hawk. c.* 23. *s.* 116.*

2dly. Chamberlain, butler and pantler, which are holden to be insufficient additions, because they denote only a special kind of officer or servant, and imply nothing which, in the common understanding of the words, comes under the notion of a mystery; and from this ground it seems to follow, that neither

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* Query? If this addition is not now frequently used, and as being well understood, not objected to. *See a note in Bacon's Abr.* vol. iii. p. 620.

groom nor page are good additions, though in some of the old books they seem to have been so admitted. 2 *Hawk. c.* 23. *s.* 117.

3dly. Hosteler; which hath been holden to be a good addition, and seems properly enough to come under the notion of a mystery; and though it hath been resolved, that any one who keeps an inn may be sued by the addition of a labourer, upon the custom of the realm, for want of due care of the goods of his guests, because, whoever keeps a common inn, is in that respect liable to answer for such defects, by whatsoever addition he may be stiled; yet this does by no means prove such person may not as well be sued by the addition of hosteler, but only that he may be sued as well under any other addition. 2 *Hawk. c.* 23. *s.* 118.

What is a good addition of the town, hamlet, place, or country.

It is a good addition of this kind to name the party late of such a town, in which respect this addition differs from that of the estate, degree or mystery; and it is said, that if a defendant be named of *A*, and late of *B*, it is sufficient to prove either addition. 2 *Hawk. c.* 23. *s.* 119. 2 *Hale's Hist.* 175. *Strange's Rep.* 924.

It is a sufficient addition of this kind, to name the defendant of a city which is a county of itself, as *de Londino, de Norwico, &c.* without more, by which it shall be intended that he lives in the county as well as city of *London* and *Norwich, &c.* unless he shew the contrary, though part of each of these cities lie out of their counties. 2 *Hawk. c.* 23. *s.* 120.

But it is not sufficient to name a defendant of any town that is not a county of itself, without shewing in what county it lies. *Cro. Jac.* 167.

If a man be named of a parish, which contains two or more towns, or hamlets, or places known, out of any town or hamlet, the defendant may plead such matter in abatement: for the statute says, that the addition shall be of the town or hamlet; but a parish shall be intended to contain no more than one town, unless the contrary be shewn. 2 *Inst.* 669. 2 *Hawk. c.* 23. *s.* 120.

If there be two towns in the county, the one called *Great Dale*, the other *Little Dale*, and the defendant be named only of *Dale*; he may plead that there are two *Dales* in the county, called *Great Dale*, and *Little Dale*, and none without an addition; and as some say, he may plead that there is no such town as *Dale*, either in this case, or where there is but one town called *Little Dale*, and he is named of *Dale*. 2 *Hawk. c.* 23. *s.* 121.

If a defendant live in a hamlet, which is so far part of a town, that those who live in it are indifferently stiled, sometimes of the hamlet and sometimes of the town, it seems to be in the election of the plaintiff to name him either of the hamlet or of the town. 2 *Hawk. c.* 23. *s.* 122.

If a defendant live in a place known by a special name, out of a town or hamlet, he may be named of such place. 2 *Hawk.* c. 23. s. 123.

The addition of the habitation of a wife is sufficiently shewn, by shewing that of the husband, because it shall be intended the wife lives where the husband does. 2 *Hawk.* c. 23. s. 124.

## *II. The manner of taking advantage of, and pleading a misnomer, or want of addition; and the effect thereof.*

Who may take advantage thereof.

A person though his name is mistaken, is not obliged to take advantage of it; and therefore if a person be indicted and acquitted of a crime, and afterwards he is indicted for the same offence, in which second indictment the crime is described to be the same in substance, with some variation of the name or addition, &c. he may make good the variance, by averring that he was the same person meant in both. 2 *Hawk.* c. 35. s. 3.

If a person killed be described by his proper name and surname in the first indictment, and by a different surname in the second, such variance may also be helped by an averment, that the person so differently named, was one and the same person; to which it is advisable to add, that he was known as well by the name in the first, as by that in the second indictment. 2 *Hawk.* c. 35. s. 3.

If a defendant appear gratis, and by attorney, to an information, he may plead a misnomer in abatement, as well as if he had appeared in person; for if he be not the person intended, his plea may be rejected, and judgment signed by *nil dicit*; but the attorney general by accepting his plea, admits him to be the defendant, and shall not afterwards say, that it doth not appear but that the plea might be put in by a stranger. 2 *Hawk.* c. 35. s. 3.

If several persons be indicted for an offence; misnomer or want of addition of one, quasheth the indictment only against him, and the rest shall be put to answer, for they are in law as several indictments. 2 *Hale's Hist.* 177.

How misnomer or want of addition salved in an appeal.

If an appellee named with an insufficient addition, or without any, appear and plead to the appeal, he cannot afterwards take advantage of the defect of the addition, because by his appearance and plea he admits himself to be the person intended. 2 *Hawk.* c. 23. s. 125.

In indictments.

So though the name and addition of the party indicted, ought to be inserted, and inserted truly in every indictment; yet, if the party be indicted by a wrong Christian name, surname, or addition, and he plead to that indictment *not guilty*, or answer to that indictment upon his arraignment by that

name, he shall not be received after to plead misnomer or falsity of his addition, for he is concluded, and estopped by his plea by that name, and of that estoppel the gaoler and sheriff, that doth execution, shall have advantage. 2 *Hale's Hist.* 175.

Must be taken advantage of upon arraignment.

Therefore he that will take advantage of the misnomer of his Christian name, addition, or surname, must do it upon his arraignment, and the entry must be special, viz. *super quo venit* Robertus Williams, *qui indictatus est per nomen* Johannis Williams *et dicit quod ubi in indictamento supponitur, quod quidam* Johannes Williams; *vi et armis, &c. ipsius nomen est* Robertus *et non* Johannes, for if he should say *venit* PRAEDICTUS *Johannes Williams* he concludes himself and cannot plead that his name is *Robert.* 2 *Hale's Hist.* 175.

The effect of pleading misnomer or want of addition.

*After all there is little advantage accruing to the prisoner, by means of these dilatory pleas;* because if the exception be allowed a new bill of indictment may be framed, according to what the prisoner in his plea avers to be his true name and addition. For it is a rule, upon all pleas in abatement, that he who takes advantage of a flaw, must at the same time show how it may be amended. 4 *Black. Com.* 335.

Therefore the safest way in criminal cases is to allow the party's plea of misnomer both as to his surname, and as to his christian name, for he that pleads misnomer of either, must in the plea set forth what his true name is, and then he concludes himself; and if the grand jury be not discharged, the indictment may presently be amended by the grand jury, and returned according to the name he gives himself. 2 *Hale's Hist.* 176.

And serjeant *Hawkins* says, where an indictment of a capital crime is abated for a misnomer of the defendant's Christian name, the court will not dismiss him, but cause him to be indicted *de novo* by his true name, and arraign him again on such new indictment. 2 *Hawk.* c. 34. *s.* 2.

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## MISPRISION.

THE word *misprision* has not any certain signification, but is generally applied to all such high offences as are under the degree of capital, and nearly bordering thereupon. 1 *Hawk.* c. 20.

And it is said that a misprision is contained in every treason or felony whatsoever, and that one that is guilty of felony

or treason may be proceeded against for a misprision only, if the king pleases. 1 *Hawk. c.* 20.

Misprisions of FELONY and TREASON in particular, are fully treated of under those titles.

*Mittimus.* *See* BAIL——COMMITMENT.

*Money, Uttering of false.* *See* COIN *and* FELONY.

——— *Counterfeiting of.* *See* FELONY *and* TREASON.

*Murder.* *See* HOMICIDE.

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## MUTE.

In what cases a man shall be said to stand mute.

HE who answers impertinently, or ineffectually, or refuses to put himself upon his trial in such manner as the law directs, may as properly be said to stand mute, as he who makes no answer at all; as where a man refuses to plead a plea in chief, or the general issue, but insists on some frivolous defence, or even to plead a good dilatory plea, and refuses to plead over to the felony, in which case after such a plea is found against him, he shall not be admitted to plead in chief; and so it is, if he plead a good plea in chief; or the general issue, but refuse to put himself upon the inquest, (that is, to be tried by God and his country if a commoner, or by God and his peers if a lord). 2 *Hawk. c.* 30. *s.* 1.

But he who demurs in law, shall not be esteemed to stand mute, nor be dealt with as such, as having refused a trial by his country, for he puts himself upon a trial by the court, which is the proper trial of a matter of law. 2 *Hawk. c.* 30. *s.* 3.

So also, after a man hath confessed himself guilty, or pleaded, and put himself upon his country, he shall not afterwards be demeaned as one that stands mute, in respect of his subsequent silence; but the jury shall be charged, and the trial shall proceed, and the like judgment shall be given as in common cases. 2 *Hawk. c.* 30. *s.* 4.

How it shall be tried, whether the party stand mute of malice or of the act of God.

It seems agreed that where a prisoner wholly stands mute without making any answer at all, the court shall take an inquest of office, by the oath of any twelve persons that happen to be present, whether he do so of malice, or by the act of God; but after an issue hath been joined, if the prisoner stand

mute when the jury are in court, if there be any need for such inquiry, it shall be made by them, and not by an inquest of office. 2 *Hawk*. c. 30. s. 5.

But where a man answers, but not effectually, it seems needless to make any inquiry whether his refusal be owing to his malice or not, because it is apparent. 2 *Hawk*. c. 30. s. 6.

What shall be done where one is found to stand mute by the act of God.

It is agreed, that where one is found to stand mute by the act of God, that the judges of the court, (who are always to be of counsel with the prisoner, to see that he have law and justice) shall inquire touching all those points which he might possibly plead for himself, as whether a felony were done, whether he be the same person that is indicted for it, whether he did it, and whether he hath any matter to allege for his discharge. 2 *Hale's Hist*. 317.

Where mute of malice.

But whether judgment of death can be given against such a prisoner, who hath never pleaded, and can say nothing in arrest of judgment, is a point yet undetermined.* 2 *Hale's Hist*. 317. 4 *Black. Com*. 324.

If he be found to be obstinately mute (which a prisoner hath been held to be, that hath cut out his own tongue, 2 *Hale's Hist*. 317), then if it be on an indictment of *high treason*, it hath long been clearly settled, that standing mute is equivalent to a conviction, and he shall receive the same judgment and execution. 2 *Hale's Hist*. 317. 4 *Black. Com*. 325.

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* In *Elizabeth Steel's* case, *Trin. Ter.* 1787, at *Serjeant's Inn*, the judges were of opinion, that a verdict finding a prisoner to be mute by the visitation of God, was not an absolute bar to a trial of the indictment; for although a person deaf and dumb from his birth is in contemplation of law incapable of guilt, upon a presumption of idiotism, yet that presumption may be repelled by evidence of that capacity to understand by signs and tokens, which it is known that persons thus afflicted frequently possess to a very great extent; that great diligence and circumspection, however, ought to be exercised in so critical a case; and that if all means to convey intelligence to the mind of such a prisoner respecting the nature of his arraignment should prove ineffectual, *the clerk of the arraigns may enter the plea of "not guilty;"* and that then it is incumbent on the court to inquire touching all those points of which the prisoner might take advantage himself; to examine all the proceedings against him with a critical eye; and to render him every service consistent with the rules of law. Accordingly, at the *Old Bailey* sessions in *October* following, *the prisoner* Steel *was arraigned, and not pleading under the pretence of deafness, a jury was returned and sworn, "well and truly to inquire whether she stood mute through wilfulness and obstinacy, or by the visitation of God;" and they having found a verdict "mute by the visitation of God," the same jury were immediately sworn in chief, and charged to try the indictment; they found the prisoner "guilty;" and at the close of the session she received sentence of transportation for the term of seven years.* Leach's Cr. L. 394.

And as in this the highest crime, so also in the lowest species of felony, namely, *petit larceny, and in all misdemeanors*, standing mute hath always been equivalent to conviction. 2 *Inst.* 177. 2 *Hawk. c.* 30. *s.* 10. 4 *Black. Com.* 325.

But upon appeals or indictment for other *felonies or petit treason*, the prisoner was not by the ancient law looked upon as convicted, so as to receive judgment for the felony; but he was for his obstinacy, to receive the terrible sentence of *penance* or *peine* (which is probably nothing more than a corrupted abbreviation of *prisone*), *forte et dure.* † 4 *Black. Com.* 325.

And the English judgment of penance for standing mute was as follows: That the prisoner should be remanded to the place from whence he came, and put in some low dark room, and there laid on his back, without any manner of covering, except for the privy parts, and that as many weights should be laid upon him as he could bear, and more, and that he should have no manner of sustenance, but of the worst bread, and water; and that he should not eat the same day on which he drinks, nor drink the same day on which he eats; and that he should so continue *till he die*, or (as anciently the judgment ran), *till he should answer.* 2 *Hawk. c.* 30. *s.* 16.

But this dreadful species of torture was wholly abolished by the statute of 12 *Geo.* 3. *c.* 20, by which it is enacted, that "if any person arraigned on any indictment or appeal for "felony, or on any indictment for piracy, shall stand mute, or "will not answer directly to the felony or piracy, such person "shall be convicted of the felony or piracy charged in such "indictment or appeal; and the court shall award judgment "and execution against such person, in the same manner and "with the same consequences as if he had been convicted by "verdict or confession."

*Navigable Rivers.* See FELONY.

*Navigation inland.* See CANALS, HARBOURS and RIVERS.

*Newspapers.* See STAMPS.

*Nightwalkers.* See ARRESTS and SURETY.

*Nobility.* See PEERS.

*Nonage.* See INFANTS.

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† As the statute of *Westm.* 1. 3 *Ed.* 1. *c.* 12, says in general, that felons standing mute shall be put *in prisone forte et dure.*

*Non compos.* See IDEOTS and LUNATICS.

*Non conformists.* See DISSENTERS.

*Northern Borders.* See ESCAPE and FELONY.

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# NUISANCES.

Common nuisance.

A COMMON nuisance is an offence *against the public*, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires. 2 *Rol. Abr.* 83. 1 *Hawk. c.* 75.

And *common* nuisances are indictable only, and not actionable, for the damage being common to all the king's subjects, no one can assign his particular proportion of it; or if he could, it would be unreasonable to multiply suits, by giving every man a separate right of action, for what damnifies him in common only with the rest of his fellow subjects. 3 *Black. Com.* 219. 4 *Black. Com.* 167. *Co. Lit.* 56.

Yet this rule admits of one exception; for if a private person suffers some extraordinary damage, beyond the rest of the king's subjects, by a public nuisance, he shall have a private satisfaction by action, as if by means of a ditch dug across a public way, which is a common nuisance, a man or his horse suffer any injury by falling therein; there for this particular damage, which is not common to others, the party shall have his action. 3 *Black. Com.* 220. *Carthew's Rep.* 194. 451. *Buller's Nisi Pri. 8vo. ed.* 26. *Co. Lit.* 56.

Having premised this we shall consider:

*I. What shall be deemed a common nuisance.*

*II. How the offence must be laid in the indictment.*

*III. How a nuisance may be removed or abated.*

*IV. How the offence is punishable.*

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*I. What shall be deemed a common nuisance.*

Bawdy-houses.

It is clearly agreed that keeping a common bawdy house is a common nuisance, as it endangers the public peace, by draw-

ing together dissolute and debauched persons; and also has an apparent tendency to corrupt the manners of both sexes, by such an open profession of lewdness.* 3 *Inst.* 205. *Kitchen*, 11. 1 *Hawk. c.* 75. *s.* 6. 2 *Burrow's Rep.* 1232.

And it hath been adjudged, that this is an offence of which a *feme covert* may be as well guilty as if she were sole; and that she, together with her husband, may be indicted and condemned to the pillory for keeping a bawdy house; for the keeping the house does not necessarily import property, but may signify that share of government which the wife has in a family as well as her husband, and in this she is presumed to have a considerable part, as those matters are usually managed by the intrigues of her sex. *Salk.* 348. *pl.* 35.

Gaming-houses.

It is also clearly agreed, that all common gaming houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices, and incite to idleness, and avaricious ways of gaining property, great numbers, whose time might otherwise be employed for the general good of the community; and it hath been adjudged, that this is an offence also, for which a *feme covert* may be indicted; for as in the former case, the wife may be concerned in acts of bawdry, so here she may be active in promoting gaming, and furnishing the guests with all conveniencies for that purpose. 1 *Hawk. c.* 75. *s.* 6. 10 *Mod. Rep.* 336.

Disorderly inns, alehouses, &c.

So all disorderly inns or alehouses are public nuisances, and may upon indictment be suppressed and fined; and inns in particular, being intended for the lodging and receipt of travellers, may be indicted, suppressed, and the innkeepers fined, if they refuse to entertain a traveller without a very sufficient cause: for thus to frustrate the end of their institution is held to be disorderly behaviour. 4 *Black. Com.* 167, 168. *Cro. Car.* 549. *Dalton*, c. 7. *Dyer*, 158.†

Rope-dancers, mountebanks, &c.

Also it hath been said, that all common stages for rope-dancers, mountebanks and the like, are nuisances in the eye of the law, not only, because they are great temptations to idleness, but also because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood. 1 *Hawk. c.* 75. *s.* 6. 4 *Black. Com.* 167.

Playhouses.

But it seems to be the better opinion, that playhouses, having been originally instituted with a laudable design of recommending virtue to the imitation of the people, and exposing vice and folly, are not nuisances in their own nature, but only may

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* For the encouragement given by the stat. 25 *Geo.* 2. *c.* 36, to prosecute persons keeping bawdy-houses and other disorderly places, see Vol. ii. p. 634.

† See also the first volume of this work, p. 37, 91.

become such by accident; as where they draw together such a number of coaches or people, as prove generally inconvenient to the places adjacent; or where they pervert their original institution, by recommending vicious and loose characters under beautiful colours to the imitation of the people, and make a jest of things commendable, serious and useful.* 1 *Hawk.* c. 75. s. 7. *Bac. Abr. tit. Nu.* (A).

Dovehouses.

It was formerly held that the erecting a dove-house on a man's own freehold was a nuisance, because the pigeons and doves were to be accounted tame animals, inasmuch as they had the sense of returning; and that therefore whoever erected such houses were answerable for the damages done by them; and because they were not liable to every man's action, to avoid multiplicity of suits, it was thought a matter indictable in the leet; but the contrary opinion prevailed; because it was allowed the lord of the manor might erect, or permit by his licence any person to erect a dove-house; which he could not do if it were a nuisance, every nuisance being *malum in se*,† and if it were lawful in the lord to do so, it could not be a nuisance in another. 3 *Salk.* 248. *Cro. Eliz.* 548. *Cro. Jac.* 380. 493. *Comyn's Dig. tit. Leet*, (L. 13).

On highways.

It is clearly agreed to be a nuisance to dig a ditch, or make a hedge overthwart a highway, or to erect a new gate, or to lay logs of timber in it; or generally to do any other act which will render it less commodious.‡ 1 *Hawk.* c. 75. s. 9.

But it seems that a gate, which has continued time out of mind, is no nuisance; but that the same may be justified by prescription: for having continued time out of mind, it shall be intended, that it was set up at first by consent, on a composition with the owner of the land on the laying out the road, in which case the people had never any right to a freer passage than what they still enjoy. 1 *Hawk.* c. 75. s. 9.

And as navigable rivers are deemed highways, it is a nuisance to divert part of the river, whereby the current of it is weakened and made unable to carry vessels of the same burthen as it could before. *Noy*, 403. 3 *Keble*, 640. 759. 1 *Hawk.* c. 75. s. 11.

Also the laying of timber, or placing of a floating dock in a common river, though the soil belong to the party, is equally a nuisance, as if the soil was not his, if thereby the passage is

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* But theatres and other places of public amusement are now particularly regulated by the statutes, 3 *Jac.* 1. c. 21. 10 *Geo.* 2. c. 19. 10 *Geo.* 2. c. 28. 24 *Geo.* 2. c. 36, and 28 *Geo.* 3. c. 30. See title THEATRES, &c.

† See title PIGEONS.

‡ And nuisances to highways are treated of at large under the title HIGHWAYS, &c.

obstructed. *Bacon's Abr. tit. Nu.* (A). 1 *Hawk.* 8*vo. ed.* 363. *n.* (1).

So bringing a great ship of three hundred tons into *Billingsgate-dock*, though a common dock, yet being only so for small ships coming with provision to the markets of *London*, is a nuisance, in the same manner, as a man using with his cart a common track and horseway, so as to plough it up, and thereby render it less convenient to riders, is a nuisance indictable. 2 *Hawk. c.* 25. *s.* 35. 6 *Mod. Rep.* 145.

It hath also been holden, that it is a common nuisance to divide a house in a town for poor people to inhabit in, by reason whereof it will be more dangerous in the time of infection of the plague. 1 *Hawk. c.* 75. *s.* 11.

So also it is a common nuisance to make great noises in the night with a speaking trumpet, to the disturbance of the neighbourhood; or to permit a house near the highway to continue in a ruinous condition. 2 *Strange*, 704. *Salkeld*, 357.

Making acid spirit of sulphur.

And the manufacturing of acid spirit of sulphur, whereby the air was impregnated with *noisome and offensive stinks*, in a parish near the king's highway, and near several dwelling-houses, has been adjudged a nuisance; for Lord *Mansfield* said, it is not necessary to constitute the offence, that the smell should be *unwholesome*; it is enough if it renders the enjoyment of life and property *uncomfortable*. 1 *Burrow's Rep.* 333.

Making candles.

But it hath been holden, that it is no common nuisance to make candles in a town, because the needfulness of them shall dispense with the noisomeness of the smell. 1 *Hawk. c.* 75. *s.* 10.

Yet, saith *Hawkins*, the reasonableness of this opinion seems justly to be questionable, because whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town; and surely, adds he, the trade of a brewer is as necessary as that of a chandler, and yet it seems to be agreed, that a brewhouse erected in such an inconvenient place wherein the business cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuisance. 1 *Hawk. c.* 75. *s.* 10.

Glass-houses, or swine-yards.

So also a glass-house, or swine-yard, set up in such an inconvenient part of the town, that it cannot but greatly incommode the neighbourhood, is a common nuisance. *Salkeld*, 458. 2 *Ld. Raym.* 1163.

Eaves droppers.

Likewise, *eaves droppers*, or such as listen under walls, or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance, and presentable at the court leet, or indictable in the sessions. *Kitchen*, 20.

Scolds.

Also a *common scold* is a public nuisance to her * neighbour-

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* When the law proceedings were in Latin, this offence could only be

hood, and may be indicted for the offence. 6 *Mod. Rep.* 213.

It also seems that the suffering of a mastiff or other ferocious dog to go about unmuzzled is a common nuisance, for which the owner may be indicted*.

It is also said, that a monster shewn for money is a misdemeanor. In this case, it was a child that had four legs and four arms, and two heads, and but one belly, where the two bodies were conjoined: the child died, and was embalmed, to be kept for show; but was ordered by the lord chancellor to be buried in a week. 2 *Chan. Cas.* 110.

Nuisances by statute.

There are also several matters declared to be public nuisance by statute.

Lotteries,

For by 10 & 11 *Will.* 3. *c.* 17, all lotteries are declared to be public nuisances.†

Fireworks.

And by 9 & 10 *Will.* 3. *c.* 7, the making and selling fireworks and squibs, or throwing them about in any street, is, on account of the danger that may ensue to any thatched or timber buildings, declared to be a common nuisance‡.

Bubbles.

Also by 6 *Geo.* 1. *c.* 18, all undertakings, attempts, and pro-

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described in the indictment by the technical words *communis rixatrix*; from whence it seems that the ancient lawyers considered the female sex only to be capable of committing this crime.

* The keeping of a dog accustomed to bite sheep, or an unruly bull which is used to run at people, is not a common nuisance; but an action upon the case will lie for keeping a dog used to bite sheep, and which has killed sheep belonging to the plaintiff. Yet in such case it must be proved that the defendant knew that he would bite sheep; and killing sheep twice before is sufficient proof of usage. *Dyer*, 236. *Buller's Nisi Pri.* 8*vo. ed.* 77.

So if a man keeps a bull accustomed to run at people, no action will lie against him, unless it appear that he knew of this quality. 2 *Salkeld*, 662.

And there is a difference between beasts that are of a *wild nature*, as lions, bears, and the like, which a man must always keep up at his peril; and beasts that are of *a reclaimed nature*, and break through their tameness, such as oxen and horses; in the latter case an action lies, if the owner has had notice of the quality of the beast; but in the former case, an action lies without such notice. 2 *Ld. Raym.* 1583. *Buller's Nisi Pri.* 8*vo. ed.* 77.

Yet, if a man has an unruly horse in his stable, and leaves open the stable door, whereby the horse gets forth and does mischief, an action lies against the master. 1 *Vent.* 295.

And after such wild beasts have escaped from their keeper, so as to regain their natural liberty, in such case he that kept them before, shall not answer for the damage they shall commit after he hath lost them, and they have resumed their wild nature. 1 *Ven* 295.

But for a full and clear exposition of the law, in regard to the keeping of vicious animals, see vol. ii. Tit. Homicide.

† See title Lotteries

‡ See title Fire and Fireworks.

jects by public subscriptions, for adventuring in certain schemes of commerce, tending to the common grievance of the subjects, or a great number of them; and all public subscriptions, receipts, payments, assignments, and transfers for furthering such attempts; and more particularly presuming to act as a body corporate; the raising or pretending to raise transferable funds; or pretending to act under any charter formerly granted from the crown for any particular or special purpose therein expressed, by persons making, or endeavouring to make use of such charter, for any such other purpose not thereby intended; and all acting or pretending to act under any such obsolete charter, shall be deemed a public nuisance and nuisances, and the offenders not only liable to such fines, penalties, and punishments, as are inflicted on a conviction for common and public nuisances, but also to the further pains and penalties of *præmunire*. s. 18.

### *II. How the offence must be laid in the indictment.*

Annoyances to the interests of particular persons are not punishable by a public prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them.* 1 *Hawk.* c. 75. s. 2.

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* These private nuisances for which the party aggrieved may sustain an action, are first, such as affect a man's corporeal hereditaments; secondly, such as may damage his incorporeal hereditaments.

First, *As to corporeal inheritances*: If a man build a house so close to me, that his roof overhangs my roof, and throws the water off his roof upon mine, this is a nuisance for which an action will lie. *Fitz. Nat. Brev.* 134. 3 *Black. Com.* 216.

Likewise to erect a house or other building so near to mine, that it obstructs my ancient lights and windows, is a nuisance of a similar nature. 9 *Co. Rep.* 58. 3 *Black. Com.* 217.

But in this latter case it is necessary that the windows be *ancient;* that is, have subsisted there a long time without interruption, otherwise there is no injury done; for he hath as much right to build a new edifice upon his ground, as I have upon mine: since every man may erect what he pleases upon the upright or perpendicular of his own soil, so as not to prejudice what has long been enjoyed by another; and it was my folly to build so near another man's ground. *Cro. Eliz.* 118. *Salk.* 459. 3 *Black. Com.* 217.

And this was determined, although it appeared that the house and the lights had continued by the space of thirty or forty years. *Cro. Eliz.* 118.

Also if a person keeps his hogs, or other noisome animals so near the house of another, that the stench of them incommodes him, and makes the air *unwholesome*, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. 9 *Co. Rep.* 58. 3 *Black. Com.* 217.

And from hence it clearly follows that no indictment for a nuisance can be good, which lays it to the damage of private per-

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And Lord *Mansfield* in the case of *the K* v. *Ward & White*, said, as has been before observed, that it is not necessary to constitute the offence, that the smell should be *unwholesome*; it is enough, if it renders the enjoyment of life and property uncomfortable. 1 *Burrow's Rep.* 333.

A like injury is, if one's neighbour sets up and exercises any offensive trade, as a dyer's, a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places, for the rule of law is that every one shall use his own, so as not to injure his neighbour; this therefore is an actionable nuisance. *Cro. Car.* 510. 3 *Black Com.* 217.

So that the nuisances which affect a man's dwelling may be reduced to these three: 1 Overhanging it—2. Stopping ancient lights—3. Corrupting the air with noisome smells; for light and air are two indispensable requisites to every dwelling. 3 *Black. Com.* 217.

But depriving one of a mere matter of pleasure, as of a fine prospect, by building a wall or the like; this, as it abridges nothing really convenient or necessary, is no injury to the sufferer, and is therefore not an actionable nuisance. 1 *Roll. Abr.* 8. 16 *Vin. Abr.* 97. 3 *Black. Com.* 217.

As to a nuisance to one's lands: if one erects a smelting-house for lead so near the land of another, that the vapour and smoke kill his corn and grass, and damage his cattle therein, this is held to be a nuisance. 1 *Rol. Abr.* 89. 3 *Black. Com.* 217.

And so it is of a lime-kiln. 16 *Viner's Abr.* 26.

And by consequence it follows, that if one does any other act in itself lawful, which yet being done in that place necessarily tends to the damage of another's property, it is a nuisance; for it is incumbent on him to find some other place to do that act, where it will be less offensive. 3 *Black. Com.* 217.

So also if my neighbour ought to scour a ditch, and does not, whereby my land is overflowed, this is an actionable nuisance. *Hale on Fitz. Nat. Brev.* 427. 3 *Black. Com.* 218.

With regard to other *corporeal* hereditaments: it is a nuisance to stop or divert water that uses to run to another's meadow or mill; to corrupt or poison a water-course, by erecting a dye-house, or a lime-pit, for the use of a trade, in the upper part of the stream; or in short to do any act therein, that in its consequence must necessarily tend to the prejudice of one's neighbour. *Fitz. Nat. Brev.* 184. 9 *Co. Rep.* 59. 2 *Roll. Abr.* 141. 3 *Black. Com.* 218.

Secondly, As to incorporeal hereditaments, the law carries itself with the same equity. If I have a way annexed to my estate, across another's land, and he obstructs me in the use of it, either by totally stopping it, or putting logs across it, or ploughing over it, it is a nuisance: for in the first case I cannot enjoy my right at all, under the latter I cannot enjoy it so commodiously as I ought. *Fitz. Nat. Brev.* 183. 2 *Roll. Abr.* 14. 3 *Black. Com.* 218.

Also if I am entitled to hold a fair or market, and another person sets up a fair or market so near mine that he does me a prejudice, it is a nuisance to the freehold which I have in my market or fair. But in order to make this out to be a nuisance, it is necessary, 1. That my

sons only; as where it accuses a man of surcharging such a common, or of inclosing such a piece of ground, wherein the inhabitants of such a town have a right of common to the nuisance of all the inhabitants of such a town; or of disturbing a water course running to such a mill, to the damage of such a person, and his tenants, without saying *of all the liege subjects of the king*. 1 *Hawk*. c 75. s. 3.

But an indictment for doing a thing which plainly appears immediately to tend to the prejudice of religion, or of the king; as for breaking the walls of a church, or embezzling the king's treasure or the like, is good without expressly laying it as a common grievance. 1 *Hawk*. c. 75. s. 4.

So an indictment of a common scold by the words *common scold* hath been held good, though it concluded to the common nuisance of *divers*, instead of all; because, says *Hawkins*, from the nature of the thing, it cannot but be a common nuisance. 1 *Hawk*. c. 75. s. 5.

And if the law be so in this case, says *Hawkins*, why should not an indictment setting forth a nuisance to a way, and express-

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market or fair be the elder, otherwise the nuisance lies at my own door.—2. That the market be erected within the third part of twenty miles from mine: for Sir *Matthew Hale* construes the reasonable days journey, mentioned by *Bracton*, to be twenty miles: as indeed it is usually understood not only in our own law, but also in the civil, from which we probably borrowed it; so that if the new market be not within seven miles of the old one, it is no nuisance; for it is held reasonable that every man should have a market within one third of a day's journey from his own home, that the day being divided into three parts, he may spend one part in going, another in returning, and the third in transacting his necessary business there. 2 *Roll. Abr* 140. *Bracton, b.* 3. c 16. 2 *Inst* 567. 3 *Black. Com*. 218.

If such a market or fair be on the same day with mine, it is *prima facie* a nuisance to mine, and there needs no proof of it, but the law will intend it to be so: but if it be on any other day, it *may* be a nuisance; though whether *it is so or not*, cannot be intended or presumed, but I must make proof of it to the jury. 3 *Black. Com*. 219

If a ferry is erected on a river, so near another ancient ferry as to draw away its custom, it is a nuisance to the owner of the old one. For where there is a ferry by prescription, the owner is bound to keep it always in repair and readiness, for the ease of all the king's subjects, otherwise he may be grievously amerced; it would be therefore extremely hard, if a new ferry were suffered to share his profits, which does not also share his burthen. 3 *Black. Com*. 219.

But where the reason ceases, the law also ceases with it: therefore it is no nuisance to erect a mill so near mine, as to drive away the custom, unless the miller also intercepts the water. 3 *Black. Com*. 219.

Neither is it a nuisance to set up any trade or a school, in neighbourhood or rivalship with another, for by such emulation the public are like to be gainers; and if the new mill or school occasion a damage to the old one, it is *damnum absque injuria*. 3 *Black. Com*. 219.

ly and unexceptionably shewing it to be a highway, be good, notwithstanding it conclude to the nuisance of divers, without saying *all the king's subjects?* for, saith he, perhaps the authorities which seem to contradict this opinion might go upon this reason, that in the body of the indictment it did not appear with sufficient certainty whether the way wherein the nuisance was alleged, were a highway or only a private way, and therefore it shall be intended from the conclusion of the indictment, that it was a private way. 1 *Hawk. c.* 75. *s.* 5.

But an indictment of a common scold must contain a precise charge that she is a *common scold*, which is a technical term appropriated by the law to this purpose, and no general indictment of this kind without such words will be good, though it charge the defendant with being a common and turbulent brawler, sower of discord, stirrer up of strife, or the like. 2 *Strange*, 1247.

However, it seems to be agreed, that an indictment against one as a common scold, is good without setting out the particulars*. 2 *Hawk. c.* 25. *s.* 59.

And it is not necessary *to prove* the particular expressions used, it is sufficient to prove generally that the defendant is always scolding. 1 *Term Rep.* 754.

It also seems by the common law, if a fact done in one county prove a nuisance to another, it may be indicted in either county. 2 *Hawk. c.* 25. *s.* 37.

And the court will not quash an indictment for a nuisance, but the defendant must either plead or demur to it†. *Dalton, c.* 66. 6 *Mod. Rep.* 145.

## III. *How a nuisance may be removed or abated.*

*Hawkins* says, It seemeth to be certain, that any one may pull down or otherwise destroy a common nuisance, as a new gate, or even a new house erected in a highway or the like: for if one whose estate is, or may be, prejudiced by a private nuisance actually erected, as a house hanging over his ground, or stopping his lights, may justify the entering into another's ground, and pulling down and destroying such a nuisance, whether it were erected before or since he came to the estate; it cannot but follow, much more, that any one may lawfully destroy a common nuisance; and as the law is now holden, it seems that in a plea, justifying the removal of a nuisance, the party need

* For the same reasons that an indictment of barretry is good; see therefore title BARRETRY in vol. i.

† And this, though the nuisance be abated. See the case of the *Q.* v. *Leich*, in p. 476, infra.

not shew that he did as little damage as need be *. 1 *Hawk. c.* 75. *s.* 1[illegible].

But so much of the thing only that causes the nuisance ought to be removed. 1 *Burrow*, 267.

As if *part* of a house be a nuisance, this part only shall be abated. *Jones*, 222. 16 *Viner's Abr.* 38.

And when the house or other thing is (so far as the nuisance is) abated, 'tis not lawful *to destroy the materials*, but they shall remain to the owners of them, and to him that made the nuisance. *Jones*, 222. 16 *Viner's Abr.* 38.

And it hath been adjudged, that if a river be stopped, to the nuisance of the country, and none appear bound by prescription to clear it, those who have the piscary, and the neighbouring towns, who have a common passage and easement therein, may be compelled to do it. 1 *Hawk. c.* 75. *s.* 13.

### *IV. How the offence is punishable.*

All common nuisances are indictable in the sessions. 2 *Hawk. c.* 10. *s.* 58.

For justices of peace have power *to inquire of all public nuisances.* 6 *Mod. Rep.* 255. *Salk.* 259.

Nuisances are also inquirable in the leet and torn. 2 *Hawk. c.* 10. *s.* 58.

And an offender being convicted, shall be fined, and committed till he pay it. 1 *Shaw*, 639. *Wood's Inst. b.* 3. *c.* 3. *p.* 443.

And it is said that one convicted of a nuisance, done to the king's highway, may be commanded by the judgment to remove the nuisance at his own costs. 1 *Hawk. c.* 75. *s.* 14.

And it seemeth to be reasonable, saith *Hawkins*, that those who are convicted of any other common nuisance should also have the like judgment. 1 *Hawk. c.* 75. *s.* 14.

But where a man is indicted for a nuisance, the court never admits him to a small fine, till the nuisance is removed, which must be proved by oath, or by the certificate of two justices. *Dalton, c.* 66.

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* For in the case of *Lodie* v. *Arnold*, *Mic.* 9 *Will.* 3, the court said, that where *A* has a right to abate a *public* nuisance, *he is not bound to do it orderly*, and with as little damage in abating it as may be. *Salk.* 459.

For if a man erects a gate, and hangs it upon *iron hooks*, cross a highway, any people who pass in the way may *fling down* the gate, and *cut the gate* from the hooks, or use any other means to reform the nuisance. *Cro. Car.* 184, 185.

And that, though the defendants in that case might have opened the gate *without cutting* it down. *Salk.* 459.

And the court said in the case of *the Q.* v. *Leich*, *E.* 3 *Ann*. that they never quash indictments for nuisances; but if a nuisance be removed, and the party confesses it, the removal will be a great mitigation of the fine, and in that case it may be proper to offer affidavits to lessen the offence to the court, but not otherwise. 6 *Mod. Rep.* 145.

And an act for *a general pardon* will discharge the offender only as to the *fine*, and not as to the *abatement* of the nuisance; for the abatement is not a punishment of the party, but a removal of that which is a grievance to other people, and any person may abate a common nuisance. 2 *Salkeld*, 458.

On an indictment for a nuisance in *erecting* a wall across a road (not for continuing it) the sessions gave judgment against the defendants, and adjudged that they should be fined the sum of 6d. each—an objection was taken to this, on a motion to quash the return to a mandamus whereby those facts appeared, that this was not a full judgment on the indictment; for being an indictment for a nuisance, it should have been part of the judgment that the nuisance be abated. But the court said that it did not appear that the justices at sessions ought to have adjudged that the nuisance should be abated, the indictment not charging the defendants with *continuing* but merely with erecting the wall, so that for any thing that appeared on the record, the nuisance did not in fact exist at the time when the indictment was preferred. *The K.* v. *Justices of the W. R. of Yorkshire*, *Hil.* 38 *Geo.* 3. 7 *Ter. Rep.*

But where an indictment for a nuisance states the nuisance to be still in existence, there must be judgment to abate the nuisance. *R.* v. *Stead. Hil.* 39 *Geo.* 3. 8 *Ter. Rep.* 142.

As to persons convicted of being *eaves droppers*, it is said that they are punishable by fine, and finding sureties for their good-behaviour. 4 *Black. Com.* 168.

And it seemeth that a *common scold*, if convicted, shall be sentenced to be placed in a certain engine of correction, called a trebuchet, castigatory or *cucking* stool; which in the *Saxon* language is said to signify the scolding stool, though now it is frequently corrupted into ducking-stool; because the residue of the judgment is, that when she is so placed therein, she shall be plunged in the water for her punishment. 4 *Black. Com.* 168. 1 *Hawk.* c. 75. s. 14. 6 *Mod. Rep.* 11. 178. 213.

And a master is punishable for a nuisance done by his servant; as for instance, if the servant throws dirt in the highway, the master is indictable; for he is responsible for all acts done by his servant in the course of, and *proper* for his employment, though he hath no express command of his master, for it shall be intended that he had authority from his master. 1 *Ld. Raym.* 264.

Form of an indictment for a common nuisance by erecting a furnace, with a boiler, to be used for the boiling of tripe and the offal of beasts.

Middlesex. } *THE jurors for our lord the king upon their oath present, that* J C, *late of the parish of* St. George, Hanover-square, *in the county of* Middlesex, *labourer, on the twenty-ninth day of* October *in the first year of the reign of our sovereign lord* George *the third, king of* Great Britain, &c. *with force and arms, at the parish aforesaid, in the county aforesaid, near the dwelling-houses of divers liege subjects of our said lord the king there, and also near divers streets and common highways there, did unlawfully and injuriously erect, and set up, and cause to be erected and set up, a certain furnace, with a boiler, to be used for boiling of tripes, and other entrails and offal of beasts: And that the said* J C, *on the said twenty-ninth day of* October, *in the year aforesaid, and divers other days and times, between that day and the day of the taking of this inquisition, at the parish aforesaid in the county aforesaid, divers great quantities of tripes, and other entrails and offal of beasts, in the said boiler, unlawfully and injuriously did boil, and yet doth boil, whereby divers noisome and unwholesome smokes and smells did then, and on the said other days and times, there arise, so that the air there was greatly corrupted and infected, to the great damage and common nuisance of all the subjects of our said lord the king, not only near the same place inhabiting and residing, but also in and through the said common streets and highways, going, returning, and passing, and against the peace of our said the king, his crown and dignity.*

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## OATHS.

AN oath is a solemn calling or appealing to Almighty God as a witness of the truth of what we affirm or deny, in the presence of those who are duly authorized to administer it to us; and it is called corporal, because in taking it the party is obliged to lay his hands on, and kiss the holy gospel. 3 *Co. Inst.* 165. Oaths in general.

It seems to be A HIGH CONTEMPT at the common law to refuse to take the oath of allegiance to the king, which all laymen The offence at common law of refusing to take

the oath of allegiance.

above the age of twelve years are bound * to take at the torn of court-leet. 1 *Hawk. c.* 24. *s.* 3. *Co. Lit.* 68.

For allegiance is the tie, or *ligamen*, which binds the subjects to the king, in return for that protection which the king affords the subjects, and it is founded in reason, and the nature of government. 1 *Black. Com.* 366.

And surely, saith *Hawkins*, nothing can be more unreasonable than to deny the king, *whose government we are happy under*, all proper assurances of our fidelity to him: for how can we expect to enjoy the privileges of subjects from one to whom we refuse to acknowledge ourselves subjects, or hope for protection from one, whom we provoke to esteem us as his enemies, *or blame that government for treating us as malcontents, to which we give so just a cause to suspect our fidelity?* If we consult the law of God, that will tell us, *that the powers that be are ordained of God.* If we will hear the voice of REASON that WILL CONVINCE US, *that not only the peace and safety of the community, but also* OUR OWN PRESERVATION *requires us to pay a dutiful obedience to those who govern us*: and can we, adds the learned author, think it unlawful to engage ourselves to do what it is our duty to do? 1 *Hawk. c.* 24. *s.* 3.

But besides this express engagement, the law also holds that there is an *implied*, original and virtual allegiance, owing from every subject to his sovereign, antecedently to any express promise, and although the subject never swore any faith or allegiance in form. For as the king, by the very descent of the crown, is fully invested with all the rights, and bound to all the duties of sovereignty, before his coronation; so the subject is bound to his prince by an intrinsic allegiance, before the superinduction of those outward bonds of oath, homage and fealty, which were only instituted to remind the subject of this his previous duty, and for the better securing its performance. 1 *Black. Com.* 368, 369.

The formal profession therefore, or oath of subjection, is nothing more than a declaration in words of what was before implied in law. 1 *Black. Com.* 869.

For as Sir *Ed. Coke* very justly observes, all subjects are equally bounden to their allegiance, as if they had taken the oath; because it is written by the finger of the law in their *hearts*, and the taking of the corporal oath is but an outward declaration of the same. 2 *Inst.* 121.

And Sir *William Blackstone* adds, The sanction of an oath, it is true, in case of violation of duty, makes the guilt still more accumulated, by superadding perjury to treason: but it does not increase the civil obligation to loyalty; it only strengthens

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* Whether natives, denizens, or aliens. 1 *Black. Com.* 368.

the social tie by uniting it with that of religion. 1 *Black. Com.* 369.

This oath of allegiance, or rather the allegiance itself,* is held to be applicable not only to the political capacity of the king, or regal office, but to his natural person and blood royal: and the same principle of personal attachment, and affectionate loyalty, which induced our forefathers, would doubtless, if occasion required, *induce* their sons to hazard all that is dear to them, life, fortune, and family, in defence and support of their liege lord and sovereign. 1 *Black. Com.* 371.

The oath of allegiance, as administered for upwards of six hundred years, contained a promise, "to be true and faithful "to the king and his heirs, and truth and faith to bear of life "and limb and terrene honour, and not to know or hear of any "ill or damage intended him, without defending him therefrom." Upon which Sir *Matthew Hale* makes this remark, that it was

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* Allegiance, both express and implied, is however distinguished by the law into two sorts or species, the one *natural*, the other *local*; the former being also *perpetual*, the latter *temporary*. 1 *Black. Com.* 369.

Natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth. For immediately upon their birth they are under the king's protection; at a time too when (during their infancy) they are incapable of protecting themselves. Natural allegiance is therefore a debt of gratitude; which cannot be forfeited, cancelled or altered, by any change of time, place or circumstance, nor by any thing but the united concurrence of the legislature. An Englishman who removes to *France*, or to *China*, owes the same allegiance to the king of *England* there as at home, and twenty years hence as well as now. For it is a principle of universal law that the natural born subject of one prince cannot by any act of his own, no not by swearing allegiance to another, put off or discharge his natural allegiance to the former; for this natural allegiance was intrinsic and primitive, and antecedent to the other, and cannot be divested without the concurrent act of that prince to whom it was first due. 1 *Black. Com.* 369.

Local allegiance is such as is due from an alien or stranger born, for so long time as he continues within the king's dominions and protection; and it ceases the instant such stranger transfers himself from this kingdom to another. 1 *Black. Com.* 371.

*Natural* allegiance is therefore *perpetual*; and *local*, *temporary* only, and that for this reason evidently founded upon the nature of government, that allegiance is a debt due from the subject, upon an implied contract with the prince, that so long as the one affords protection, so long the other will demean himself faithfully. As therefore the prince is always under a constant tie to protect his natural born subjects, at all times and in all countries; for this reason their allegiance due to him is equally universal and permanent. But on the other hand, as the prince affords his protection to an alien, only during his residence in this realm, the allegiance of an alien is confined in point of time, to the duration of such his residence, and in point of locality to the dominions of the British empire. 1 *Black. Com.* 370.

short and plain, not entangled with long and intricate clauses or declarations, and yet is comprehensive of the whole duty from the subject to his sovereign. 1 *Black, Com.* 368.

But at the revolution, the terms of this oath being thought perhaps to favour too much the notion of non-resistance, the present form was introduced by the convention parliament, and finally settled in the first year of the reign of *Geo.* 1. 1 *Black. Com.* 368.

For by stat. 1 *Geo.* 1. *c.* 13. *s.* 2, it is enacted, that the form of the oath of allegiance shall be as follows:

Allegiance.

*I A B do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king* George.

So help me God.

This oath, it is observed by Sir *William Blackstone*, is more general and indeterminate than the former; the subject only promising "that he will be faithful and bear true allegiance to the king," without mentioning "his heirs," or specifying in the least wherein that allegiance consists. However the oath of abjuration, afterwards introduced in the reign of *Will.* 3, and finally altered and settled in the sixth year of his present majesty, very amply supplies the loose and general texture of the oath of allegiance. 1 *Black. Com.* 368.

It is also enacted, by the aforesaid statute of 1 *Geo.* 1. *c.* 13. *s.* 2, that the form of the oath of supremacy shall be as follows:

Supremacy.

*I A B do swear that I do from my heart abhor, detest and abjure as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of* Rome, *may be deposed or murdered by their subjects, or any other whatsoever; and I do declare, that no foreign prince, person, prelate, state or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual within this realm.*

So help me God.

And by 6 *Geo.* 3. *c.* 53. *s.* 1, the oath of abjuration shall be administered in the form hereinafter prescribed; (that is to say),

Abjuration.

*I A B do truly and sincerely acknowledge, profess, testify, and declare, in my conscience, before God and the world, that our sovereign lord king* George *is lawful and rightful king of this realm, and all other his majesty's dominions and countries thereunto belonging. And I do solemnly and sincerely declare That I do believe in my conscience, that not any of the descendants of the person who pretended to be prince of* Wales, *dur-*

*ing the life of the late king* James *the second, and, since his decease pretended to be, and took upon himself the style and title of king of* England, *by the name of* James *the Third, or of* Scotland, *by the name of* James *the Eighth, or the style and title of king of* Great Britain, *hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging: and I do renounce, refuse, and abjure, any allegiance or obedience to any of them. And I do swear, that I will bear faith and true allegiance to his majesty king* George, *and him will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his majesty, and his successors, all treasons and traitorous conspiracies which I shall know to be against him or any of them. And I do faithfully promise, to the utmost of my power, to support, maintain and defend, the succession of the crown against the descendants of the said* James, *and against all other persons whatsoever, which succession, by an act, entitled,* An act for the further limitation of the crown, and better securing the rights and liberties of the subject, *is, and stands limited to the princess* Sophia, *electress and dutchess dowager of* Hanover, *and the heirs of her body being protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a christian.*

So help me God.

Penalty inflicted by statute for refusing the oaths.

Having stated the form of the respective oaths of allegiance, supremacy, and abjuration, it will be proper in the next place to consider—First, *the offence of refusing the oaths of allegiance and supremacy.*—Secondly, *the offence of refusing the oath of abjuration.*—Thirdly, *How such oaths may be tendered to suspected persons, by two justices of peace.*

For refusing the oaths of allegiance and supremacy.

First, *As to the offence of refusing the oaths of allegiance and supremacy.*] It is enacted by 1 *Will. & Mar. st.* 1. c. 8, that every person who shall neglect to take the oaths of allegiance and supremacy shall incur the penalties of former statutes. s. 3.

That is to say, By 5 *Eliz.* c. 1, commissioners may be appointed by the lord chancellor to tender the same to such persons as by their commissions they shall be authorised to tender the same unto. *s.* 7.

And if any person appointed by such commissioners to take

the said oaths, shall refuse to take the same on tender thereof, he shall incur a *præmunire*. *s.* 8.

And all persons having authority to tender the said oaths shall, in 40 days after such refusal, if the term be open, and if not, then on the first day of the term next after the said 40 days, make certificate of the names, places, and degrees of the persons refusing, into the *King's Bench*, upon pain of 100*l.* to the king: and the sheriff of the county wherein the said court shall sit, shall impannel a jury, who shall inquire of such refusals in such manner as if they had happened in the same county. *s.* 9.

*May impannel a jury, who shall inquire.*] But it hath been resolved that the *trial* must be by a jury of the county, wherein the oaths were refused: for the statute only authorizes *an indictment* by a jury of the county wherein the court sits. *Dyer*, 234. 1 *Hawk. c.* 19. *s.* 35.

Also by 7 *Jac.* 1. *c.* 6, it shall be lawful for any of the privy council, and every bishop in his diocese, to require any baron or baroness of the age of eighteen years, or above, to take *the said oaths*—and for any TWO JUSTICES OF PEACE (1 Qu.) to require any person of the age of eighteen years, under the degree of a baron or baroness, to take the same;—

And if any person of or above the said age and degree shall be presented or convicted for not coming to church, or not receiving the communion, before the ordinary or other having lawful power to take such presentment, three of the privy council, whereof the lord chancellor, lord treasurer, lord privy seal, or principal secretary to be one, shall require such person to take the said oaths.

And if any other person of the said age, and under the said degree, shall be presented or convicted for not coming to church or receiving the sacrament, or if the minister, constable, and churchwardens, or any two of them, shall complain to *any justice of peace*, near adjoining to the place where any person complained of shall dwell, and the said justice shall find cause of suspicion, any justice shall require such person to take the oaths. *s.* 26.

*Any justice shall require such person to take the oaths.*] In the construction hereof it hath been resolved, that the justices may send their warrant to bring the bodies of such persons before them, but that they cannot authorize the constables to break open the doors to take them. 12 *Co. Rep.* 130, 131. 1 *Hawk. c.* 19. *s.* 40.

And if any person of the age of eighteen years shall refuse to take the oaths, being duly tendered, the persons authorized may commit the offender to the common gaol until the next assizes or quarter-sessions, where the oaths shall be again required; and if the party shall again refuse to take them, every person so refusing shall incur the penalty of *præmunire*,

except women covert, who shall be only committed to prison till they do take the same. 7 *Jac.* 1. *c.* 6. *s.* 26.

*May commit the offender.*] In the construction hereof it hath been holden, that the persons authorized to tender the oaths, may commit the party refusing though he be a lord of parliament, for the power to commit extends to all persons whatsoever. 12 *Co. Rep.* 131.

And moreover, every person refusing to take the oaths as above shall be disabled to execute any public place of judicature, or bear any other office (being no office of inheritance or ministerial function), within *England*, or to practise the law, or physic, or surgery, or the art of an apothecary, or any liberal science for gain, until he shall receive the oaths. 7 *Jac.* 1. *c.* 6. *s.* 27.

It is also enacted, by 1 *Will.* & *Mar. sess.* 1. *c.* 8, that if any person shall refuse to take the said oaths, being tendered to them by persons lawfully authorized to tender the same, the persons tendering shall commit the persons refusing to the common gaol or house of correction for three months, unless such offender shall pay down to the person tendering, such sum, not exceeding 40*s.* as he shall require such offender to pay; which money shall be paid to the churchwardens or overseers for the relief of the poor of the parish where such offender did last inhabit;—and if at the end of three months the person so refusing shall again refuse to take the oaths when lawfully tendered, the person tendering shall commit the person refusing to the common gaol or house of correction for six months, unless such person pay down to the persons tendering, such sum, not exceeding 10*l.* nor under 5*l.* as they shall require for his second refusal, to be disposed in manner aforesaid; and unless such offender become bound with two sureties, with condition to be of good behaviour, and to appear at the next assize, or gaol delivery: at which assizes or gaol delivery the oaths shall be again tendered by the justices; and if the offender then refuse to take the same he shall be incapable of any office civil or military, and shall be bound to good behaviour until he take the same; and in case such person shall refuse also to make the declaration against popery in 30 *Car.* 2. *st.* 2. *c.* 1 *, such person shall suffer all penalties as a popish recusant convict †. *s.* 9.

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* See this declaration under title Papists.

† Which in the end may amount to the alternative of abjuring the realm, or suffering death as a felon. 4 *Black. Com.* 124.

For popish recusants convicted in a court of law of not attending the service of the church of *England*, are subject to the following disabilities, penalties, and forfeitures, over and above those inflicted on persons barely professing the popish religion. 4 *Black. Com.* 56.

And moreover, by 7 & 8 *Will.* 3. *c.* 27, every person who shall refuse to take the oaths when tendered by persons lawfully authorized, or who shall neglect to appear when summoned in order to have the oaths tendered, shall, until he take the oaths, be liable to the penalties inflicted upon popish recusants convict; and the persons tendering the oaths shall upon every such refusal or default of appearance, record the names and places of abode of the persons refusing or not appearing, with the time of such tender or default, and certify the record to the justices of assize of *oyer* and *terminer*, or gaol delivery, at their next session, who shall certify the same into the exchequer. *s.* 1.

But the penalties to be incurred by any persons as popish recusants convict by this act for not taking the oaths, may be pardoned by the king under the privy seal. *s.* 15.

And no person who shall refuse to take the oaths (which oaths and subscription, the sheriff or chief officer taking the

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They are considered as persons excommunicated †; they can hold no office or employment; they must not keep arms in their houses. but the same may be seized by the justices of the peace; they may not come within ten miles of *London*, on pain of 100l. they can bring no action at law, or suit in equity, they are not permitted to travel above five miles from home, unless by license, upon pain of forfeiting all their goods; and they may not come to court under pain of 100l. No marriage or burial of such recusant, or baptism of his child, shall be had otherwise than by the ministers of the church of *England*, under other severe penalties. A married woman when recusant, shall forfeit two thirds of her dower or jointure, may not be executrix or administratrix to her husband, nor have any part of his goods; and during the coverture may be kept in prison unless her husband redeems her at the rate of 10l. a month, or the third part of all his lands. And lastly, as a *feme covert* recusant may be imprisoned, so all others must within three months after conviction, either submit and renounce their errors or, if required so to do by four justices, must abjure and renounce the realm: and if they do not depart, or if they return without the king's licence, they shall be guilty of felony, and suffer death as felons without benefit of clergy. 4 *Black. Com.* 56. See also title Papists, infra.

† Excommunication is two-fold; the less and the greater excommunication: the less is an ecclesiastical censure excluding the party from the participation of the sacraments: the greater proceeds farther, and excludes him not only from these but also from the company of all christians; and the common law, in aid of the ecclesiastical jurisdiction, holds an excommunicated person disabled to do any act that is required to be done by one that is *a good and lawful man.* He cannot serve upon juries, cannot be a witness in any court, and which is the worst of all, cannot bring an action, either real or personal, to recover lands or money due to him. 3 *Black. Com.* 101, 102.

poll at any election of members to serve in parliament, at the request of any one of the candidates, are required to administer) shall be admitted to give any vote for the election of any knight, citizen, burgess, or baron, to serve in parliament. *s.* 19.

*Hawkins* says, It seems to be the intention of the above statute of *Will.* & *Mar.* to give the government an election to proceed either in the mild method therein prescribed, or the more severe one appointed by former laws, according to the circumstances of the case, and quality of the offender. 1 *Hawk. c.* 24. *s.* 5.

Secondly, *as to the offence of refusing the oath of abjuration.*] It is by 13 *Will.* 3. *c.* 6, (which first introduced that oath) enacted, that it shall be lawful for any person authorised to administer the oaths appointed by 1 *Will.* & *Mar. st.* 1. *c.* 8, to tender the oath of abjuration to any person; and if any person to whom the oath shall be tendered, shall neglect to take the same, the person tendering the oath shall certify the refusal to the next quarter-sessions; and the refusal shall be recorded, and certified by the clerk of the peace into the *Chancery* or *King's Bench.* *s.* 13. Refusing the oaths of abjuration.

And it was further enacted by 6 *Anne*, c. 14, that it shall be lawful for any two justices of peace (1 Qu.) or any other persons appointed by the crown by order of privy council, or by commission under the great seal, *to summon all such persons as they shall suspect to be dangerous or disaffected*, and tender the oath of abjuration, and at the next quarter-sessions certify the names and places of abode of all persons refusing to take the oath, to be certified by the clerk of the peace into the *King's Bench*; and if the person certified shall not within the next term or sessions appear in the *Chancery* or *King's Bench*, and take the oath, and enter his so doing upon the certificate returned, he shall be adjudged a popish recusant convict, and undergo the penalties as such. *s.* 7.

Thirdly, *how such oaths may be tendered to suspected persons by two justices.*] *By* 1 *Geo.* 1. *st.* 2. *c.* 13, it shall be lawful for *two justices of peace*, or any other person or persons who shall be by his majesty for that purpose specially appointed, by order in privy council, or by commission under the great seal, to administer and tender *the oaths of allegiance, supremacy, and abjuration*, TO ANY PERSON OR PERSONS WHATSOEVER, *whom they shall suspect to be dangerous or disaffected to his majesty or his government*; and if any person to whom the said oaths shall be so tendered, shall neglect or refuse to take the same, such justices, or persons aforesaid, shall certify the refusal to the next quarter-sessions; and the said refusal shall be recorded amongst the rolls of that sessions, and shall be from thence certified by the clerk of the peace into the court of *Chancery* or *King's Bench*, there to be recorded in a roll there to be How the oaths may be tendered to suspected persons.

kept for that purpose only; and every person so neglecting or refusing to take the oaths, shall be adjudged from the time of his neglect or refusal, a popish recusant convict, and as such to forfeit and be proceeded against. *s.* 10.

*And to the intent that no person may avoid taking the several oaths above-mentioned, upon any pretence whatsoever,* it is further enacted, that it shall be lawful for two justices of peace, or any other persons specially appointed as aforesaid, by writing under their hands and seals, to summon any person to appear before them to take the said oaths; which summons shall be served upon such person, or left at his usual place of abode, with one of the family there; and if such person shall not appear according to such summons, then, upon proof upon oath of the serving of the said summons, such justices, or persons, are to certify the same to the next general quarter-sessions, there to be entered upon the rolls of the sessions; and if such person so summoned shall not appear and take the said oaths at the said general quarter-sessions, the names of the persons so certified being publicly read at the first meeting of the said sessions, such person shall be adjudged a popish recusant convict, and as such, to forfeit and be proceeded against as if he had actually refused to take the said oaths; and the same shall be from thence certified by the clerk of the peace into the court of *Chancery* or *King's Bench*, there to be recorded in a roll to be kept for that purpose only. *s.* 11.

But any persons who shall become popish recusants convict, and shall afterwards take the oaths, shall be discharged from such conviction. 1 *Geo.* 1. *st.* 2. *c.* 13. *s.* 26.

And it seems that the oaths ought to be read, or offered to be read to the party, otherwise he cannot be said *to refuse* them. *Read on the stat. tit. Oath.*

For the declaration against transubstantiation, see p. 491 infra.

For the offence of exercising an office without taking the above oaths, see title *OFFICES*.

For the exemptions in regard to quakers, see title *QUAKERS*; and in respect of other dissenters, see title *DISSENTERS*.

For the relief granted to papists who take the oaths prescribed by 31 *Geo.* 3. *c.* 32, see title *PAPISTS*.

For the power of the justices of peace to administer oaths, see title *JUSTICES OF PEACE*.

For the nature of oaths in general, and how far the evidence of sectarians and persons not professing the christian faith, is admissible, see title *EVIDENCE*.

For the offence of swearing falsely, see title *PERJURY*.

For the offence of profane swearing, See title *SWEARING*.

For the offence of administering or taking unlawful oaths, see *SEDITIOUS PRACTICES*.

*Obscenity*. *See* BAWDY-HOUSES.

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# OFFICES.

NO person shall be placed, elected, or chosen, to any office, or place of mayor, alderman, recorder, bailiff, town-clerk, common councilman, or other office of magistracy, place of trust, or other employment, relating to the government of any city, corporation, borough, cinque-port, or other port town, *who shall not have received the sacrament* of the Lord's Supper, according to the rites of the church of *England* within one year next before such election. 13 *Car*. 2. c. 1. *s*. 12. Qualification for offices in corporations under the CORPORATION ACT.

But no person shall be removed by the corporation, or otherwise prosecuted on account of not having received the sacrament; nor shall any incapacity, disability, forfeiture, or penalty, be incurred by reason of the same, unless the party be removed, or such prosecution be commenced within six months after his being placed or elected into his office, and the same be carried on without wilful delay*. 5 *Geo*. 1. *c*. 6. *s*. 3.

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* In the case of *Harrison* chamberlain of *London* v. *Evans*, in the year 1762, the plaintiff levied debt, in the sheriff's court, against the defendant, for the recovery of a fine of 600l. imposed by a bye law of the corporation of *London*, upon every person, who being elected should refuse to serve the office of sheriff. The defendant pleaded the stat. 13 *Car*. 2, averring that he was a protestant dissenter within the toleration act, of scrupulous conscience, and therefore had not received the sacrament. The plaintiff replied the above statute of 5 *Geo*. 1. c. 6, which confirms members of corporations in their respective offices, although they have not received the sacrament according to the directions of 13 *Car*. 2. To this replication the defendant demurred; and judgment was given upon it in favour of the city. The defendant appealed to the court of hustings, where the judgment was affirmed. A special commission of errors was sued out by the defendant, directed to *Willes*, *Parker*, *Foster*, *Bathurst*, and *Wilmot*, and after great argument and deliberation, the judgment of the sheriff's court, and the affirmance by the court of hustings, were unanimously reversed. The plaintiff brought a writ of error in parliament; and on the 4th of *Feb*. 1767, Lord *Mansfield*, with other judges against *Perrot*, were of opinion, that up-

Therefore if neither of these events have happened within the time limited, the election becomes absolute and unavoidable, for the statute operates as a protection to the possession, and not as a bar to the remedy. 1 *Black. Rep.* 229. 2 *Burrows,* 1013. *Cowper's Rep.* 539, 540.

And every person so placed or elected, shall take the oaths of allegiance and supremacy, at the same time that the oath of office is taken; which shall be administered by those, who by charter or usage administer the oaths of office; and in default of such by two justices of the corporation, if there be any such, or otherwise by two justices of the county, and on default thereof every such election, placing, and choice, shall be void. 13 *Car.* 2. c. 1. s. 12.

*Shall take the oaths.*] It hath been adjudged that the party must take the oaths at his peril; and that the magistrate need not tender to him, but he must tender himself to the magistrate and demand them; and if it be refused, must sue a *mandamus,* and the magistrate is punishable; if the law were otherwise, it would be in the power of the magistrate to elude the act in favour of the party. *Salkeld,* 428.

*And in default of such by two justices.*] Therefore on a return to a *mandamus* it is not enough to say that the party did not take the oaths before those who by charter or usage are to administer the same; for two justices have a power to administer the oath, and he might take the oath before them. *Salkeld.* 448,

Qualification for offices in general by the TEST ACTS.

And every person that shall bear any office, *civil or military,* or shall receive any salary, fee, or wages, by reason of any grant from his majesty, or who shall have any command or place of trust under his majesty, or by his authority, or by authority derived from him, within *England, Wales,* or *Berwick,* or in his majesty's navy, or in the islands of *Jersey* and *Guernsey,* or who shall be of the household, or in the service of his majesty (*and all ecclesiastical persons, heads and other members of colleges and halls in any university that are of the foundation, or enjoy any exhibition (being eighteen years old), and all persons teaching or reading to pupils, and all schoolmasters and ushers, and preachers of separate congregations, all constables *, except tything men, and headboroughs*) *and every serjeant and counsellor at law, barrister, advocate, attorney, solicitor, proctor, clerk, or notary practising in any court,* 1 Geo. 1. st. 2. c. 13. s. 2. 20.);

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on the facts admitted by the pleadings in this cause the defendant *Evans* should *be allowed to object to the validity of his election to the office* of sheriff in bar to the present action; *by reason that he had not taken the sacrament within the time limited.* Cowper's Rep. 393. 535.

* This from the exception in the 20th section, in respect to tything-men and headboroughs, seems to intend *high constables* only, and not petty constables.

shall (*within six calendar months after such admission*, 9 Geo. 2. c. 26. s. 3.) take the oaths of supremacy and allegiance (*and abjuration*, 1 Geo. 1. st. 2. c. 13. s. 92.) in the court of *Chancery* or *King's Bench* (or in the *Common Pleas* or *Exchequer*, 1 Ann. st. 1. c. 22.), or at the general or quarter sessions of the place where he shall be or reside, between the hours of nine and twelve in the forenoon, and no other; and during the time of taking thereof, all proceeding in the said court shall cease *. 25 *Car.* c. 2. *s.* 1. & 2. 1 *Geo.* 1. *st.* 2. c. 13. s. 2.

1st. The oaths of supremacy, allegiance, and abjuration, are to be taken in the courts at *Westminster* or quarter sessions.

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* The oath of allegiance is also to be taken under the statute of 7 *Jac.* 1. c. 6, in manner following:

That is to say,

Archbishops and bishops.

By every archbishop and bishop, before the lord chancellor. *s.* 2.

Ecclesiastical officers.

Every ecclesiastical judge and officer, before the archbishop or bishop. *s.* 3.

Peers.

Every person of or above the degree of a baron or baroness of *England*, and all of the privy council, residing in *London* or *Westminster*, or within thirty miles thereof, before any four of the privy council, whereof the lord chancellor, lord treasurer, lord privy seal, or principal secretary to be one; and if such persons live in the country distant above thirty miles from *London*, then before the lord bishop of the diocese, or such other persons as the lord chancellor shall by *dedimus* authorize. *s.* 4.

Servants of the household.

The sworn servants of the king, the queen, or of the household of the prince, and of the rest of the king's children, before the lord steward, the lord chamberlains and vicechamberlains to the king, and the queen, the treasurer and comptroller of the household, the master of the horse, the dean of the chapel, and the knight-marshal, the officers of the green cloth, or any three of them. *s.* 5.

Judges, justice of the peace, &c.

Every temporal judge, justice of peace, sheriff, escheator, feodary, and other officers of justice not mentioned, and every other person that shall receive any fee of the king, before the lord chancellor, lord treasurer, lord admiral, lord warden of the five ports, or one of them, or before one of the chief justices, or by four justices of assize of the county where the parties reside, or such person as the lord chancellor shall authorise. *s.* 6.

Officers in corporations.

All mayors, bailiffs, or other chief officers of cities and towns corporate, before such persons as usually administer the oath to them at their entrance into their offices. *s.* 7.

Members of parliament. Master of Ordnance, Lieut. of *Tower* and principal officers of the navy.

The knights, citizens, burgesses and barons of the five ports, of the commons house of parliament, before they be permitted to enter into the house, before the lord steward or his deputy; and the master of the ordnance, lieutenant of the *Tower* of *London*, and mint master there, the four principal officers of the navy under the lord admiral, before the lord chancellor and the lord admiral or any of them. *s.* 8.

Servants in the *Tower*.

The officers, servants and others within the *Tower* of *London*, before the lieutenant of the *Tower*. *s.* 9.

Admirals and others in the navy.

All vice-admirals, captains, masters, officers, ministers, and soldiers, in the king's ships, before the principal officers of the navy, or any two of them. *s.* 10.

But this shall not extend to the office of tything-man, head-borough, overseers of the poor, churchwardens, surveyors of

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Garrison officers and captains.

All persons having charge of fortresses or garrisons, and all captains who shall have charge of soldiers within this realm, before the justices of assize of the county or before two justices of peace. *s.* 11.

Officers in the navy or army.

And by 1 *Will. & Mar. sess.* 1. *c.* 3. every commissioned officer, and non-commissioned or warrant officer, employed in their majesties service by sea or land, shall before the delivery of such commission or warrant take the oaths of allegiance and supremacy before the commissioners of the admiralty, or their deputies, or such person as shall issue such commission or warrant, or such others as shall be authorized to administer the same; and every such officer that shall refuse to take the oaths shall be incapable of such office. *s.* 10.

But by 1 *Will. & Mar. st.* 2. c. 25, if any commission for a military employment shall be granted to any person at a distance from *London* exceeding twenty miles, such person may take the oaths at the next muster after the receipt of the commission, before the commissary of the musters or his deputy, who are required to send up a certificate thereof to the person who issued such commission: but nothing herein shall extend to the militia. *s.* 2. 4.

Doctors and other civilians.

All doctors, advocates and proctors, of the civil law, and their clerks shall take the said oath before the bishop of the diocese. 7 *Jac.* 1. c. 6. *s.* 12.

Serjeants and judges servants.

All serjeants at law, servants to the judges, and all other in the serjeants inns, before the chief justices and chief baron, or one of them. *s.* 14.

Persons in inns of court.

All the inns of court, and the principals and treasurers of every inn of chancery, before the readers and benchers of the several houses, or four of them, in their open halls. *s.* 15.

Inns of chancery.

All other, as well ancients as others not being principal or treasurer that shall be admitted into any inn of chancery, before the principal or treasurer and ancients, or four of them in their halls. *s.* 16.

Prothonotaries' clerks and attornies.

All prothonotaries, philazers, officers, attornies and clerks, in any court of record before the judges of the courts. *s.* 17.

Clerks in chancery.

All clerks of the chancery, and their under clerks, and all other officers of the chancery, and their clerks, before the master of the rolls, or before two masters of chancery, *s.* 18.

Parsons and schoolmasters.

All parsons and other persons ecclesiastical taking orders, and every schoolmaster and usher, before the bishop or other ordinary in court. *s.* 19.

Officers in universities.

The vice-chancellors of the universities, and heads of houses, proctors, and beadles, in the convocation before the senior masters. *s.* 20.

Every person promoted to any degree in school, before the vice chancellor in the congregation house. *s.* 22.

All fellows of houses, and scholars of halls or colleges, being under the degree of a baron, before the head of the house, and in the open hall. *s.* 22.

Doctors of physic.

All doctors of physic, and all others who practise physic, that shall be admitted into the college of physicians in *London*, before the president of the college. *s.* 23.

Aldermen, sheriffs, and officers in corporation.

All aldermen, sheriffs, or under officers of the cities and towns corporate, and such as shall be made freemen of any city or town corporate, before the mayor, bailiffs, or other chief officer, in the open hall.

the highways, or any like inferior civil office, or to any forester, or keeper of any park, chase, warren, or game, or bailiff of any manor, or lands, nor to any like private offices. 1 *Geo.* 1. *st.* 2. *c.* 13. *s.* 20.

And upon the tender of any person to take the oaths, the courts are required to administer the same. 25 *Car.* 2. *c.* 2. *s.* 6.

And the names of all such persons that take the oaths shall be inrolled, with the time of taking the same, in rolls kept only for that purpose in the respective courts, to be hung up in some public place there during the whole term or whole sessions. 25 *Car.* 2. *c.* 2. *s.* 5.

And the proper officer shall have of every person taking the oath 2*s.* and a register shall be kept of all persons who have taken the oaths, to be inspected without fee. 1 *Geo.* 1. *st.* 2. *c.* 13. *s.* 9.

But no seaman or soldier, under the degree of a commission or warrant officer, shall pay any fee on taking the oaths. 1 *Geo.* 1. *st.* 2. *c.* 13. *s.* 11.

What persons are to make the declaration against transubstantiation.

And at the time when any person that shall bear any office, civil or military, or who shall receive any salary, fee, or wages, by reason of any grant from his majesty, or who shall have any command or place of trust under his majesty, or by his authority, or by authority derived from him within *England*, *Wales*, or *Berwick*, or in his majesty's navy, or in the islands of *Jersey* and *Guernsey*, or who shall be of the household, or in the service of his majesty, shall take the oaths, they shall likewise make and subscribe this declaration following:

Form of declaration against transubstantiation.

*I A B do declare, that I do believe, that there is not any transubstantiation in the sacrament of the Lord's Supper, or in the elements of bread and wine, at or after the consecration thereof by any person whatsoever.*

Of which subscription there shall be the like register kept, as of the taking the oaths. 25 *Car.* 2. *c.* 2. *s.* 8.

But this shall not extend to the office of any high constable, petty constable, tithingman, headborough, overseer of the poor churchwardens, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chase, warren, or game, or of bailiff of any manor or lands, or to any like private offices. 25 *Car.* 2. *c.* 2. *s.* 14.

What persons are to take the sacrament after their admission to offices.

And every person except high constables and other persons last mentioned, that shall bear any office, civil or military, or shall receive any salary, fee, or wages, by reason of any grant

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*s.* 24; but see the corporation act, 13 *Car.* 2. *c.* 1. *s.* 12, in p. 488, supra.

from his majesty, or have command or place of trust under his majesty, or by his authority, or by authority derived from him within *England*, *Wales*, or *Berwick*, or in his majesty's navy, or in the islands of *Jersey* and *Guernsey*, or who shall be of the household, or in the service of his majesty, shall receive the sacrament of the Lord's Supper, according to the usage of the church of *England* (*within six months*, 16 Geo. 2. c. 30. s. 3) after their admittance in, or receiving, their said employment, in some public church, upon some Lord's day immediately after divine service and sermon. And every of the said persons, in the court where he takes the oaths, shall first deliver a certificate (I) of his receiving the sacrament, under the hands of the minister and churchwardens, and make proof of the truth thereof by two witnesses on oath, all which shall be put on record. 25 *Car.* 2. c. 2. s. 1, 2.

**Persons neglecting to take the oaths, their office to be void.** And all the persons aforesaid, that shall neglect to take the oaths and sacrament, shall be disabled to have, occupy, or enjoy the said offices or employment, or any thing aforesaid, or any profit appertaining to them; and such office and employment shall be void. 25 *Car.* 2. c. 2. s. 3.

**Penalty for acting not being qualified.** And every such person that shall neglect to take the oaths or the sacrament, as aforesaid, and after such neglect shall execute any of the said offices or employments, and being thereupon convicted, upon information, presentment, or indictment, in any of the king's courts at *Westminster*, or at the assizes, such person shall be disabled to sue any action or information in course of law, or to prosecute any suit in equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office, (*or to vote at any election for members of parliament*, 1 Geo. 1. st. 2. c. 13. s. 8.) and shall forfeit 500*l.* to be recovered by him that shall sue for the same in any of his majesty's courts at

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(I) Form of the certificate.

*We the minister and churchwardens of the parish of* —— *in the county of* ——, *do hereby certify, that on* Sunday *the* —— *day of* ——, *in the year of our Lord* ——, *in the parish church of* —— *aforesaid, immediately after divine service and sermon,* A A *of* —— *in the county of* ——, *gentleman, did receive the sacrament of the Lord's Supper, according to the usage of the church of* England. *Witness our hands the day and year above written.*

M. M. Minister.
A. C. } Church-
C. C. } wardens.

*Westminster*. 25 *Car*. 2. c. 2. s. 5. 1 *Geo*. 1. *st*. 2. c. 13. s. 8.

And by 7 & 8 *Will*. 3. c. 24, if any person shall act as serjeant at law, counsellor, barrister, advocate, attorney, solicitor, proctor, clerk, or notary, by practising as such in any court, not having taken the oaths of allegiance and supremacy, and made the declaration against transubstantiation, such persons shall incur all the penalties in the statute of *præmunire*.

But such last-mentioned persons being papists, may in lieu of such oaths and declaration, take the oath and declaration appointed to be taken by papists, by the statute of 31 *Geo*. 3. c. 22. See 31 *Geo*. 3. c. 32. s. 22, under title PAPISTS.

Persons beyond the seas.

But persons beyond the seas shall not be disabled, if they shall qualify within six months after their return. 9 *Geo*. 2. c. 26. s. 4.

Office of inheritance.

And nothing in the acts shall take away any office of inheritance, so as the person having such office substitute a deputy, and such deputy qualify himself, and be approved of by the king under his privy signet. 25 *Car*. 2. c. 2. s. 11. 1 *Geo*. 1. *st*. 2. c. 13. s. 18, 32.

How persons may be discharged of penalties.

Also any person who by any neglect shall forfeit his office, may be capable of a new grant of the same, or any other office on taking the oaths, &c. so as such office be not granted to another. 25 *Car*. 2. c. 3. s. 14. 1 *Geo*. 1. *st*. 2. c. 13. s. 14.

Persons disabled in the universities.

And if any member, or head of any college or hall in *Oxford* or *Cambridge*, that are of the foundation, or enjoy any exhibition, being of the age of eighteen years, shall refuse the said oaths, or to produce a certificate of his having taken them, and cause it to be entered in the register of such college or hall, within one month after his having taken them; and if the persons to whom the right of election shall be, do not elect some other person in his place within twelve months after such refusal, the king, under the great seal or sign manual, may nominate some person qualified according to the statutes of the college, to succeed; and such person shall enjoy such place as if he had been chosen by the electors of such college or hall. 1 *Geo*. 1. *st*. 2. c. 13. s. 12.

And if the head of any college or hall refuse to admit such person nominated as aforesaid, ten days after such admission demanded, the visitor is to admit him in one month after it shall be demanded; and if such visitor refuse, the *King's Bench* may issue out a *mandamus* to such visitor, to admit such person. s. 13.

In the construction of these statutes, it seems to have been holden:

First; that the persons disabled lose only their right to the profits of their offices from the time of such disability; but that they lose nothing vested in them before. 1 *Hawk.* c 8. s. 2.

Secondly; that it is no excuse for a person bound by law to accept a corporation office, that he is disabled to receive the sacrament by having been excommunicated. 1 *Hawk.* c. 8. s. 2.

Thirdly; that notwithstanding the words of 13 *Car.* 2. c. 1. s. 12,* are so very strong as to make the election void, and those of *Car.* 2. c. 2. s. 3, to make such persons disabled to have, occupy, or enjoy the said offices, yet it hath been strongly holden, that the acts of one under such disability being installed in such an office, and executing the same without any objection to his authority, may be valid as to strangers; for otherwise, not only those who no way infringe this law, but even those whose benefit is intended to be advanced by it, might be sufferers for another's fault, to which they are no way privy; and one chasm in a corporation, happening through the default of one head officer, would perpetually vacate the acts of all others, whose authority, in respect of their admission into their offices, or otherwise, may depend on his. 1 *Hawk.* c. 8. s. 3.

For the form of the oaths, see title *OATHS*.

And note, that an act occasionally passes, whereby persons who have omitted to qualify themselves in due time are indemnified, provided they qualify themselves within a time in such act limited, and provided judgment hath not been given against them for the penalty incurred by their neglect, and provided their place is not filled up.

For the duty upon offices and pensions, see title *TAXES*.

*Orchards.* See Trespass.

*Overseers of the Poor.* See Poor.

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* See p. 487, 490 supra.

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# OUTLAWRY.

Outlawry what. OUTLAWRY is a punishment inflicted on a person for a contempt and contumacy, in refusing to be amenable to and

abide by the justice of that court which hath lawful authority to call him before them; and as this is a crime of the highest nature, being an act of rebellion against that state or community of which he is a member, so doth it subject the party to divers forfeitures and disabilities*. *Co. Lit.* 128. *Dr. & Stu. dia.* 2. *c.* 3. *Rol. Abr.* 802.

In capital cases.

But the law distinguishes between outlawries in capital cases and those of an inferior nature; for an outlawry in treason and felony is of itself an attainder, and subjects the party to such an award thereupon to be made by the court where he is brought, as is suitable to the offence for which he is indicted and outlawed; for the law interprets the party's absence a sufficient evidence of his guilt, and without requiring further proof or satisfaction, accounts him guilty of the fact: on which ensues corruption of blood and an absolute forfeiture of his

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* A person outlawed cannot regularly maintain any action or bring any bill in equity, for by his contumacy he is out of the king's protection, and shall have no privilege or benefit from that law of which he is a violator, and to which he refuses to be amenable. *Co. Lit.* 128. 2 *Vern. Rep.* 37.

But a person outlawed may be sued being to his prejudice. *Noy*, 1. *Sider.* 60.

And if a person be outlawed at the suit of one man, all men shall take advantage of his personal disability. *Co. Lit.* 128.

But such disability abateth not the writ, but only disableth the plaintiff, until he obtain a charter of pardon. *Ibid.*

And the disability cannot be taken advantage of until the exigent be returned; for the inquiring after him in the county is in order that he may appear; and therefore if he does appear at the return of the exigent, the law is satisfied, and the outlawry must not be recorded against him. *And.* 36. *Co. Lit.* 128. *Dyer*, 317. 2 *Rol. Abr.* 805.

Also this disability is only pleadable where the plaintiff sues in his own right; for if he sues in the right of another as executor, administrator, or as mayor with his commonalty, outlawry shall not disable him, because the person whom he represents has the privilege of the law; and outlawry being no objection to his representation, it is no objection but he should be answered. *Co. Lit.* 128. *Doct. Placit.* 390.

A person outlawed is also disabled to be a juror, because he is not *liber et legalis homo*. *Co. Lit.* 6.

But one outlawed in a personal action may be a witness though he cannot be a juror. 2 *Hawk. c.* 46. *s.* 21.

And if a man be outlawed for felony, though by this he loses all his goods, yet he may make executors to reverse it. 1 *Leonard*, 325.

But he cannot make a testament either of his goods and chattels, or of his lands or tenements, for they are forfeited, and not his. *Law of Test.* 51.

Yet a man *outlawed in a personal action* may well make a will and have executors. And the executors may have assets to satisfy, over and besides the goods forfeited to the crown: for the testator might have a debt due upon a contract, which is not forfeited; or he might devise lands to be sold by his executors, and the like. *Cro. Eliz.* 57.

whole estate real and personal, and many men who never were tried have been executed upon the outlawry. *Co. Lit.* 128. 3 *Inst.* 161. 2 *Hale's Hist.* 399. 4 *Burrows Rep.* 2549.

And if a man be indicted before justices of the peace, and thereupon outlawed, and is taken and committed to prison, the justices of gaol delivery may award execution of this prisoner, for they are constituted to deliver the gaol. 4 *Inst.* 166. 2 *Hale's Hist.* 35.

And by the statute 34 *Hen.* 8. *c.* 14, the clerks of the crown, clerks of assize, and clerks of the peace, are to certify into the *King's Bench* the names of all persons outlawed, attainted, or convicted; and upon letters from the justices aforesaid, certificates shall be made of such persons to the justices of gaol delivery.

Yet, though an outlawry be an attainder, and equal to a conviction, or sentence by verdict or confession, it does not subject the party to any severer punishment than the crime does for which the outlawry was pronounced; and therefore if it be in such a crime for which clergy is allowable, the party outlawed shall be allowed his clergy in the same manner as he who is convicted by verdict or confession. 2 *Hawk. c.* 33. *s.* 27.

And it is said by *Blackstone*, that any person may arrest an outlaw on a criminal prosecution, either of his own head, or by writ or warrant of *capias utlagatum*, in order to bring him to execution. 4 *Black. Com.* 320.

But though anciently an outlawed felon was said to have *caput lupinum*, and might be knocked on the head like a wolf, by any one that should meet him; because having renounced all law, he was to be dealt with as in a state of nature, when every one that should find him might slay him; yet now to avoid such inhumanity, it is holden that no man is entitled to kill him wantonly or wilfully; but in so doing he is guilty of murder, unless it happens in the endeavour to apprehend him. 4 *Black. Com.* 320.

In less offences or personal actions.

Outlawry in lesser crimes or in personal actions*, does not occasion the party to be looked upon as guilty of the fact, nor

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* Outlawry in civil actions is considered as in the nature of civil process, to compel an appearance to the suit; or if after judgment to procure satisfaction. The forfeiture, though nominally to the king, yet in truth goes to the plaintiff, towards payment of his demand. If the outlaw appears, pays all the costs, puts in sufficient bail, and does every thing he can to put the plaintiff in as good a condition as he would have been in originally; or if after judgment, the outlaw pays the debt and costs: the court reverses the outlawry upon motion *without* any writ of error. The form of the reversal is "for the errors assigned, and other errors appearing upon the record," although there is in truth no error at all. 4 *Burrow's Rep.* 2549.

does it occasion an entire forfeiture of his real estate; but yet it is very fatal and penal in its consequences, and generally a more severe punishment than would be inflicted for the crime of which the outlaw stands accused or convicted; for hereby he forfeits his goods and chattels, and all the profits of his lands, and is subject to perpetual imprisonment if he can be found, with many incapacities, while the outlawry remains in force. *Plowd.* 541. 9 *H.* 6. 20. *b.* *Show. Parl. Ca.* 73. 4 *Burrow's Rep.* 2549.

But the forfeiture must be of things which the party hath in his own right, and not of such as he hath in the right of another: and therefore an executor or administrator outlawed forfeit nothing which they have in right of their testator or intestate. 3 *Bac. Abr.* 756.

Doors may be broke to apprehend an outlaw.

And from the heinousness of the offence, the sheriff may, on a *capias utlagatum*, break open the house of a person outlawed; for it would be unreasonable that this privilege or protection, allowed of in other cases, should be extended to him, who is declared a contemner and violator of the law, and therefore the seizing him as an outlaw, doth imply the liberty of entering and seizing him wheresoever he lies hid. 2 *Hale's Hist.* 202. 3 *Bac. Abr. tit. Outlawry.*

And as the punishment of outlawry is of a very severe nature, so the law hath provided and taken great care, that no person should be outlawed, without due notice, and apparent contempt to the court, as will appear from what follows. 2 *Inst.* 47. 3 *Bac. Abr. tit. Outlawry.*

In what cases process of outlawry lies.

It is laid down by serjeant *Hawkins*, that process of outlawry at this day lies in all appeals, and in all indictments of treason or felony, and in all indictments *with force and arms*, and in all returns of rescous, and as some say, in all indictments of conspiracy or deceit, or other crimes of a higher nature than trespass *vi et armis.* 2 *Hawk.* c. 27. s. 113.

But it lies not on any indictment for a crime of an inferior nature. 2 *Hawk.* c. 27. s. 113.

And this process of outlawry lies upon informations for criminal misdemeanors at common law, even though there be no actual force, as in the case of libels and the like: for force is not the criterion, on which the process of exigent was founded at common law: the greatness of the crime, and the severity of the punishment, seem to be the material circumstances, originally attended to, in founding this process. 4 *Burrow's Rep.* 2557, 2558.

But it seems agreed, that it lies not on any action (nor, as some say, on any indictment) on a statute, unless it be given by such statute, either expressly as in the case of *præmunire*, or impliedly as where a recovery is given by an action wherein

such process lay before, as in the case of a forcible entry. 2 *Hawk.* c. 27. s. 114.

From what jurisdiction process of outlawry is to issue.

It is clear that the courts at *Westminster* may issue process of outlawry, and that the court of *King's Bench*, either upon an indictment originally taken there or removed thither by *certiorari*, may issue process of *capias* and *exigent* into any county of *England*, upon a *non est inventus* returned by the sheriff of the county where he is indicted, and a *testatum* that he is in some other county. 2 *Hale's Hist.* 198.

Also justices of oyer and terminer* may issue a *capias* or *exigent* (and so proceed to the outlawry of any person indicted before them), directed to the sheriff of the same county where they hold their session, at common law; and by the statute 5 *Ed.* 3. c. 11, they may issue process of *capias* and *exigent* to all the counties of *England*, against persons indicted or outlawed of felony before them. 2 *Hale's Hist.* 199.

And justices of the peace in their sessions may proceed to outlawry† in cases of indictment found before them, and that by the common law; and also in cases of popular actions by the statute of 21 *Jac.* 1. c. 4.‡ 2 *Hale's Hist.* 52.

But it is said that they cannot issue a *capias utlagatum*, but must return the record of the outlawry into the *King's Bench*, and there process of *capias utlagatum* shall issue. *Dalton*, c. 193. p. 672. 2 *Hale's Hist.* 52.

Yet in *Coke's Reports* it is said to have been the opinion of all the court of *Common Pleas*, that if one be outlawed before justices of peace upon an indictment of felony, they may award a *capias utlagatum*; and that such was the opinion of *Periam*, chief baron, and all the court of *Exchequer*, as to the justices of peace; for they that have power to award process of outlawry, have also power to award a *capias utlagatum*, as incident to their authority and jurisdiction. 12 *Co. Rep.* 102.

Nevertheless as the words of the commission‖ are, that justices of peace may make and continue processes against persons indicted, UNTIL THEY *can be taken*, *surrender themselves*, *or* BE OUTLAWED, the former opinion in *Dalton* and *Hale* seems to be the better.

And the process to the outlawry, *viz.* the *capias* and *exigent*, must be in the king's name, and under the judicial seal of the king, appointed to that court that issues the process, and with

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* But justices of gaol delivery regularly cannot issue a *capias* or *exigent*: because their commission is to deliver the gaol of the prisoners therein being, so that those whom they have to do with, are always intended in custody already. 2 *Hale's Hist.* 199.

‡ For the manner see next page, and p. 500. infra.

† See p. 62 supra.

‖ See p. 120 supra.

the teste of the chief justice or chief judge of that court or sessions*. 2 *Hale's Hist.* 199.

Against whom a process of outlawry may be issued.

If a nobleman, or peer of the realm, be indicted for treason or felony, yea, or but for a trespass with force and arms, as an assault or riot, and he cannot be found, process of outlawry shall be awarded against him, and he shall be outlawed, for the suit is for the king, and the offence is a contempt against him. 2 *Hawk. c.* 44. *s.* 16. 2 *Hale's Hist.* 192, 200.

And an infant above the age of fourteen may be outlawed, and the outlawry is not erroneous; but an infant under the age of fourteen cannot be outlawed, for if he be it is erroneous. *Dyer*, 104. 2 *Hale's Hist.* 207, 208.

Yet the outlawry of such an infant is not void, it being of record, but it is voidable only by writ of error. *Dyer*, 239. 2 *Rol. Abr.* 805.

And a woman is said to be *waived* and not outlawed; and the reason, says my lord *Coke*, why the outlawry of a woman is so called, is because women are not sworn in leets or torns, as men are, who are above the age of twelve, and therefore, says he, men are called *utlagati*, that is, *extra legem positi*; but women are *waviatæ*, that is, *derelictæ*, left out or not regarded, because they are not sworn to the law. *Co. Lit.* 122. *b.*

In what manner process of outlawry is to be issued.

It seems to be agreed, that in every indictment or appeal, for any crime under the degree of capital, there must be three *capias's* to the sheriff of the same county wherein the prosecution is commenced, before the *exigent* shall be awarded, unless it be after judgment; in which case one *capias* is sufficient. 2 *Hawk. c.* 27. *s.* 115.

Also it is said to be agreed that one *capias*, before the award of the *exigent*, hath always been sufficient in an indictment or appeal of death, or high treason. 2 *Hawk. c.* 27. *s.* 116.

But two *capias's* are required in all indictments of any other felony, by the stat. 25 *Ed.* 3. *c.* 14. 2 *Hawkins, c.* 27. *s.* 116.

For by the said stat. 25 *Ed.* 3. *c.* 14, it is enacted, that "if "after any man be indicted † of felony before the justices in "their sessions to hear and determine, it shall be commanded "to the sheriff to attach his body by writ or precept, which is "called a *capias*;—and if the sheriff return that the body is not "found, another shall be incontinently made, returnable at

* That is, it ought to be under the *teste* of the first in the commission. 2 *Hawk. c.* 27 *s.* 8.

† *Hawkins* says it seems to have been the general opinion, that this statute extends to appeals as well as indictments, though it mention only the latter: but that it extends not to any indictment or appeal of death; though it speak of felony in general. 2 *Hawk. c.* 27. *s.* 116.

"three weeks after, wherein it shall be comprised, that the "sheriff shall cause to be seized his chattels, and safely to keep "them till the day of the writ or precept returned; and if the "sheriff return, that the body is not found, and the indictee "cometh not, the exigent shall be awarded, and the chattels "shall be forfeit, as the law of the crown ordaineth; but if he "come and yield himself, or be taken by the sheriff or by "other minister, before the return of the second *capias* then the "goods and chattels shall be saved."

But the provisions in the above statute being in most cases found impracticable *, *Hale* says, that at this day the process in case of an indictment of any felony is only one *capias*, and then an exigent. 2 *Hale's Hist.* 195.

The writ of exigent shall never be awarded to the sheriff of any other county than that wherein the offence is laid. 2 *Hawk.* *c.* 27. *s.* 119.

And by the common law there was no necessity of a capias to the sheriff of any other county. *Ibid.*

Also by 31 *Eliz.* c. 3, in every action personal, wherein any writ of exigent shall be awarded (*and also upon the issuing of any exigent for any criminal matter before judgment or conviction*, 4 & 5 Will. & Mar. c. 22. s. 4.), one writ of proclamation shall be made out, having day of *teste* and return as the writ of exigent shall have, directed and delivered of record to the sheriff of the county where the defendant shall be dwelling, which writ of proclamation shall contain the effect of the action. And the sheriff shall make three proclamations, *viz.* one in the open county court, one other at the quarter sessions, and one other at least before the *quinto exactus*, at or near the most usual door of the church or chapel of that town or parish where the defendant shall be dwelling; and if the defendant shall be dwelling out of any parish, then in such place, of the parish in the same county, next adjoining to the place of the defendant's dwelling, and upon a *Sunday* immediately after divine service. And all outlawries had, and no writs of proclamations awarded and returned, according to this statute, shall be void.

And the said writ of proclamation shall be delivered to the sheriff three months before the return. 4 & 5 *Wil.* & *Mar.* *c.* 22. *s.* 4.

But though the words are express, that any outlawry pronounced contrary to the directions of the statutes shall be void; yet it is not to be taken, as if such outlawries were absolutely void, for they are only voidable by writ of error. *Cro. Eliz.*

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* For the second *capias* is to be returned at three weeks after, which may be out of term, or after the session of the justices ended. 2 *Hale's Hist.* 195.

179. 3 *Co.* 59. *Plow.* 137. *Hob.* 166. 2 *Hawkins*, c. 27. s. 127.

Before a person is pronounced outlawed, he is by virtue of the writ of exigent, to be demanded from county court to county court five times; and if he stands in contempt all these days, judgment of outlawry is to be given by the coroners at the fifth county court. *Cro. Jac.* 660. 3 *Bac. Abr.* 771. 2 *Hawk.* c. 48. s. 21.

By whom judgment of outlawry is to be pronounced.

The coroner is therefore bound to be present in the county court to pronounce judgment of outlawry upon the party not appearing to the exigent. 2 *Hale's Hist.* 204.

And if the coroner refuse to give judgment of outlawry, the court will grant an attachment against him; and it is said that coroners have for such an offence been fined 10*l.* *Noy*, 113.

And if the judgment appear not by the return of the exigent to have been given by the coroner, it is erroneous except in *London*, where the mayor by custom is coroner, and the judgment given by the recorder. 2 *Hale's Hist.* 204.

But if there be two coroners in a county, the calling upon the exigent may be by one of them, and likewise one alone may give the judgment of outlawry. 2 *Hale's Hist.* 204.

But it seems that the return must be by both. 2 *Hale's Hist.* 204.

The names of the coroners must also be subscribed to the judgment of outlawry. 2 *Hale's Hist.* 204.

And it must be subscribed also by the name of their office, as *A B* and *C D coroners*; unless in *London*, where, as has been before observed, the mayor is coroner. 2 *Hale's Hist.* 204.

The sheriff's name and office must also be subscribed to the return of the exigent, viz. *A. B.* esq. sheriff. 2 *Hale's Hist.* 204.

Return of exigent.

And if an exigent be awarded against a man, and after he is *quinto exactus*, and before the return of the exigent, he dies, yet the outlawry shall stand in its force, and shall not be reversed; for judgment was by the coroners upon the *quinto exactus*, and they may certify the outlawry; but it is otherwise if he die before the *quinto exactus*. *Noy*, 49.

The return of the outlawry must also be certain; therefore if on an outlawry against two, it be returned that they did not appear, without saying *that neither of them* appeared, it will be erroneous; for peradventure one of them did appear. *Rol. Abr.* 802. 2 *Rol. Rep.* 440.

So if on an exigent against women, it be returned that they are *outlawed*, it will be error, for it ought to have been *waived*. *Cro. Jac.* 358.

And the return must shew where the county court was held,

and in what county; and this must be shewn upon every *exactus*. 2 *Hale's Hist.* 203.

And it appears from a series of judgments that *a technical form* of words are requisite in the description of the county court, at which an outlaw is enacted *. 4 *Burrow's Rep.* 2563.

For if an outlawry be returned in this manner, ——— *at my county court held at C*, &c. it is erroneous, because it is not said at my county court of ———, *naming the county*. 2 *Roll. Abr.* 802. 4 *Burrow's Rep.* 2563.

So if it be returned that the proclamations were at the county court held at such a place *in* the county aforesaid, without saying *for* the county, the outlawry will be erroneous. 2 *Keble*, 128. 1 *Vent.* 108. 4 *Burrow's Rep.* 2564.

And it is said that the reason hereof is, that anciently one sheriff had two or three counties, and might hold the court in one county for another. 2 *Keble*, 128.

To what time the forfeiture relates.

If a man be outlawed upon an indictment of felony, or treason, and pending the process he alien his land, yet the king or lord shall have the land which he held at the time of the treason or felony committed; for the indictment contains the year and day it was done unto which the outlawry relates. *Co. Lit.* 13, 14.

As to goods and chattels, the very issuing of the writ of exigent in case of treason or felony gives to the king, or the lord of a franchise to whom that liberty is granted, the forfeiture of all the goods of the party so put in exigent from the time of the teste of the writ of exigent. *Co. Lit.* 288.

And as the award of the exigent gives the forfeiture, so if that be well awarded, the forfeiture shall continue, though the outlawry be reversed for error in law or in fact, subsequent to the award of the exigent: for the king's title being by the exigent and that being of record, must be avoided by matter of as high a nature. 2 *Hale's Hist.* 204, 205.

Therefore it is necessary for a party outlawed in felony to bring his writ of error specially, as well against the award of the exigent, as against the pronouncing of the outlawry; for though the outlawry be reversed it doth not reverse the award of the exigent. 2 *Hale's Hist.* 205.

But error in the exigent is cause to reverse the outlawry, and error in the appeal or indictment, upon which the exigent is awarded, is cause to reverse both outlawry and exigent. 2 *Hale's Hist.* 205.

And as the award of the exigent gives the forfeiture of the goods, so the outlawry gives the forfeiture or loss of the lands of the party outlawed; viz. in case of outlawry of treason, his lands are forfeited to the king, of whomsoever they are held; and

* See the form at the end of this title.

in case of outlawry of felony, to the lord by escheat of whom they are immediately holden. 2 *Hale's Hist.* 206.

But it must be remembered, that the bare judgment of outlawry by the coroners, without the return thereof of record, is no attainder, nor gives any escheat; but it must be returned by the sheriff with the writ of exigent, and the return indorsed. 2 *Hale's Hist.* 206.

Or else it must be removed by *certiorari*; for the judgment given by the coroner in the county court is not matter of record, that court not being a court of record. 1 *Inst.* 288.

And it seems to be settled, that in cases not capital the party by a bare outlawry immediately forfeits his personal goods, and they are vested in the king; but that he does not forfeit the profits of his lands, nor chattels real, till inquisition taken; and that therefore an alienation after outlawry, and before inquisition, is good to bar the king of the pernancy; but if he makes a feoffment after inquisition, the feoffee has the estate, and the king shall have the profits. 1 *Salk.* 395. 3 *Salk.* 262.

Reversal of an outlawry.

Outlawries are regularly to be reversed by plea; or by writ of error for any errors, be they errors in fact or in law. 2 *Hale's Hist.* 207.

And it seems generally agreed, that *any outlawry whatsoever* may be avoided by a defendant's coming in upon the *capias utlagatum*, and pleading a misnomer, either of the name or addition in the writ. 2 *Hawk. c.* 50. *s.* 9.

And it is said in many books that he may plead that there is no such town as that whereof he is named. 2 *Hawk. c.* 50. *s.* 9.

But it seems clearly agreed that he may plead that at the time of the writ pronounced, and ever since, he hath made his abode at some other town, and not at that in the writ. 2 *Hawk. c.* 50. *s.* 9.

Also it seems generally agreed, that by the common law in favour of life, an outlawry of *treason* * *or felony* might be avoided by plea, that the defendant was in prison, or in the king's service beyond the sea, at the time of the outlawry pronounced against him. 2 *Hawk. c.* 50. *s.* 6.

But *Hawkins* takes it to be generally agreed, that no outlawry *for any other crime*, against a party rightly described, can be avoided by the plea of any matter of fact whatsoever, without a writ of error. 2 *Hawk. c.* 50. *s.* 1. 6.

And no writ of error in criminal matters is to be allowed

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* But now in the case of treason, the outlawry cannot be avoided because the party was out of the realm, for by 26 *Hen.* 8. *c.* 13, and 5 & 6 *Ed.* 6. *c.* 11, process and outlawry against any for treason who is out the realm, shall be as good as if he were then resident within the realm; provided, that if within one year after he yield himself to the chief justice and offer to traverse the indictment on which he was outlawed, he shall be admitted so to do, and being acquitted of the indictment, shall be discharged of the outlawry.

without an express warrant from the king, or the consent of the attorney general. 2 *Hawk. c.* 50. *s.* 12. 3 *Mod. Rep.* 42.

Also the party outlawed must render himself in custody, and in custody must come in person to the bar; and when he is demanded what he can say, he is in person to pray allowance of the writ of error.* 2 *Hale's Hist.* 209.

And the writ being allowed, the record is to be removed, namely, the indictment, process and return, and outlawry: he is then to assign his errors in person †, and a day is given to the king's attorney to reply to him. 2 *Hale's Hist.* 209.

Also though it be expressly provided by stat. *West.* 1. 3 *Ed.* 1. c. 15 ‡, that "those who are outlawed shall be excluded the benefit of replevin," yet it hath been always held that the court of *King's Bench* may in their discretion, in special cases, bail a person upon an outlawry of felony; as where he pleads, that he is not of the same name, and therefore not the same person with him that was outlawed, or alleges any other error in the proceedings. 2 *Hawk. c.* 15. *s.* 40.

But a person in custody upon a *capias utlagatum after conviction* of a criminal misdemeanor, will not be admitted to bail, *without the consent* of the prosecutor. 4 *Burrow's Rep.* 2542.

Effect of the avoidance of the outlawry.

It is agreed, that after an outlawry of treason or felony is reversed, the party shall be put to plead to the indictment, for that still remains good; and he may be tried at the *King's Bench* bar; or the record may be remitted into the country, if it were removed into the *King's Bench* by *certiorari*, with a command to the justices below to proceed. 2 *Hawk. c.* 50. *s.* 17. 2 *Hale's Hist.* 209.

So if a man be outlawed by process in an information, and comes in and reverses the outlawry, he must plead *instanter* to the information. *Salkeld*, 371.

And after the outlawry is reversed, the party shall be restored to his law and ability to sue. *Co. Lit.* 288.

And also to his lands and all effects not seized into the king's hands. 1 *Anderson*, 188. 2 *Hawk.* c. 50. *s.* 19. 5 *Mod. Rep.* 61. 2 *Vern. Rep.* 312. 3 *Bacon's Abr.* 778.

Forms of process on an outlawry.

The Capias.

George *the third, by the grace of God of* Great Britain,

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* But in civil matters, the defendant need not appear in person to reverse an outlawry, but may appear by attorney. 4 & 5 *Will. & Mar.* c. 18. 2 *Salk.* 496. 4 *Burrow's Rep.* 2542.

† But in *Wilkie's* case, 4 *Burrow's Rep.* 2543, the assignment of errors was done privately between the agents, by consent on both sides, without actually bringing the defendant into court.

‡ See vol. i. p. 256.

France, *and* Ireland, *king, defender of the faith, and so forth, to the sheriff of the county of ——— greeting: We command you, that you omit not, by reason of any liberty in your bailiwick; but that you enter the same, and take* O O *of* ——— *in your county, yeoman, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, tresspasses, and other misdemeanors in the said county committed at* ——— *in your county, on the* ——— *day of* ——— *next ensuing, to answer unto us concerning divers trespasses, contempts, and offences, of which he is indicted, and have you there then this writ. Witness* J. P. * *at* ——— *the* ——— *day of* ——— *in the* ——— *year of our reign.*

*At which day* S S, *knight, sheriff of the county aforesaid, returned, that he is not found in his baliwick, and he did not come; therefore it is commanded as before.*

And *Dalton* says, that the reason why the entry is made *and he did not come*, is because the party may appear voluntarily, and so avoid the attachment or arresting of his body. *Dalton, c.* 193. *p.* 671.

And he further saith, that the processes (as well of capias as outlawry) may be stayed by a supersedeas issuing from other justices out of sessions, testifying that the party hath come before them, and hath found sureties for his appearance to answer to the indictment, or to pay his fine. *Dalton*, c. 193. *p.* 672.

The alias capias.

George, &c. *(to the sheriff, &c.) We command you, as we have heretofore commanded you, that you omit not* ——— as before.

*At which day* ——— (as before) *and he did not come. Therefore it is commanded to the sheriff as it hath been oftentimes commanded, &c.*

The pluries capias.

George, *&c. (to the sheriff, &c.) We command you, as we have oftentimes commanded you, &c.* as before.

*At which day* S S, *knight, the sheriff aforesaid, returned, that the aforesaid* O O *is not found in his baliwick, and he did not come, therefore it is commanded to the sheriff that he cause to be demanded, &c.*

The exigent.

George, *&c. to the sheriff of* M *greeting. We command you that you cause* O O, *late of the parish of* ———, *in your county,*

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* *Hawkins* says that the process on indictments ought to be under the *teste* of the first in the commission; and that such a *teste* will be sufficient. 2 *Hawk. c.* 27. *s.* 8.

*yeoman, to be demanded from county court to county court, until, according to the law and custom of our kingdom of* England, *he be outlawed, if he shall not appear; and if he shall appear, that then you take him, and him safely keep, so that you may have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in your said county committed, at the general quarter-sessions of the peace of your county, next after the feast of ——— next ensuing, to be held, wheresoever in the same county the said sessions shall happen to be holden, to answer unto us of divers trespasses, contempts, and offences of which he is indicted. And have you there then this writ. Witness Sir* J P, *baronet, at ——, in the said county, the —— day of ——, in the —— year of our reign.*

## Writ of Proclamation.

George, *&c. to the sheriff of* M *greeting. Whereas by our writ we have lately commanded you, that you cause* O O, *late of the parish of ——, in your county, yeoman, to be demanded from county court to county court, until, according to the law and custom of our kingdom of* England, *he be outlawed, if he shall not appear; and if he shall appear, then that you take him, and him keep, so that you may have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses and misdemeanors in your said county committed, at the general quarter sessions of the peace of your county, next after the feast of —— next ensuing, wheresoever in the same county the said sessions shall happen to be holden, to answer unto us of divers trespasses, contempts, and offences, of which he is indicted. We therefore command you, that pursuant to the statute made for such purpose, in the fourth and fifth years of the reign of their late majesties,* William and Mary, *late king and queen of* England, *you cause the said* O O *to be proclaimed three several days, according to the form of the statute made in the thirty-first year of the reign of* Elizabeth, *late queen of* England *(one of the said proclamations to be made at or near the most usual church door of the parish where the said* O O *is an inhabitant), that he render himself to you so that you may have his body before our justices aforesaid at the time aforesaid, to answer unto us of the said trespasses, contempts, and offences, of which he is indicted. And have you there then this writ. Witness Sir* J P, *baronet, at ——, in the said county, the ——— day of ———, in the —— year of our reign.*

## Return of exigent.

*At my county court of —— (naming the county) held for the said county of ——— at ———, in the county aforesaid, on the*

*—— day of ——, in the year within written, the within named* O O *was a first time demanded, and did not appear: and at my county court of ——, held for the said county of ——, at —— aforesaid, in the county aforesaid, on the —— day of ——, in the year aforesaid, the said* O O *was a second time demanded, and did not appear: and at my county court of ——, held for the said county of ——, at —— aforesaid, in the county aforesaid, on the —— day of —— in the year aforesaid, the said* O O *was a third time demanded, and did not appear; and at my county court of ——, held for the said county of ——, at —— aforesaid, in the county aforesaid, on the —— day of ——, in the year aforesaid, the said* O O *was a fourth time demanded, and did not appear: and at my county court of ——, held for the said county of —— at —— aforesaid, in the county aforesaid, on the —— day of ——, in the year aforesaid, the said* O O *was a fifth time demanded, and did not appear.*

*Therefore by the judgment of* C C, *esq. and* S C, *gentleman, coroners of our sovereign lord the king for the county aforesaid, the said* O O, *according to the laws and customs of this realm, is outlawed.*

C C, } Coroners.
S C, }

The answer of
A B, esq. sheriff.

Note; if the exactions are some in the time of one sheriff, and some in the time of another, there must be two returns indorsed on the writ; as for instance, if there are three in the time of a former sheriff, they must be returned by him in the above form concluding thus:

The answer of
A B, esq. sheriff.

And then immediately after such return the succeeding sheriff is to return what he may have done in the execution of the writ, in the following form:

*This writ as above indorsed was delivered to me the under-named present sheriff, by the above-named late sheriff at his going out of office.*

*At my county of ——, &c.* [proceeding as before directed with respect to the return of the remaining exactions and judgment.]

The answer of
C D, esq. sheriff.

Return of the writ of proclamation.

*By virtue of the within writ to me directed, I caused the within*

O O *to be proclaimed three several days, according to the effect of the within mentioned statutes, as it is within commanded me.*

The answer of
A B, esq. sheriff.

*Pamphlets.* *See* STAMPS.

*Paper.* *See* EXCISE.

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# PAPISTS.

PAPISTS, according to the operation of the laws made to restrain the growth of popery, may be divided into three classes: FIRST, popish recusants* ; SECONDLY, popish recustants convict; THIRDLY, popish priests. These persons are not only liable to all the forfeitures, disabilities, and inconveniences, which other recusants *or non-conformists* are; but also to many particular disabilities, restraints, forfeitures, and inconveniences, to which no others are liable. It is to be observed, however, that from some of these penalties, and disabilities, they have been lately relieved upon certain conditions, particularly upon the condition of taking and subscribing an oath of allegiance and abjuration in the form appointed by the stat. 31 Geo. 3. c. 32.

It is therefore under this head intended to be shewn,

*I. How papists may make and subscribe the declaration and oath appointed by* 31 Geo. 3. c. 32.

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*The term *recusant* signifies a non-conformist of any description, viz. a person who refuses to resort to divine worship in the established church.

Papists so refusing are therefore distinguished from other non-conformists by the name of *popish recusants.*

And if they are convicted in a court of law not for attending the service of the church of *England*, they are termed *popish recusants convict.*

*II. What disabilities, restraints, penalties, forfeitures, and inconveniences popish recusants are subject to.*

*III. What disabilities, restraints, forfeitures, and inconveniences popish recusants convict are subject to.*

*IV. What disabilities, restraints, penalties, forfeitures, and inconveniences, popish priests are subject to.*

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*I. How papists may make and subscribe the declaration and oath appointed by* 31 Geo. 3. c. 32.

"Whereas, by divers laws, divers penalties and disabilities "have been imposed on papists, or persons professing the "popish religion, or holding communion with the see of *Rome*, "and their children, and certain principles have been attributed "to them which are dangerous to society and civil liberty, and "which they are willing to disclaim: and whereas it is ex-"pedient that such persons as shall take the oaths of allegiance, "abjuration, and declaration hereinafter mentioned shall be "relieved from some of the penalties and disabilities aforesaid." It is therefore enacted by 31 *Geo.* 3. *c.* 32, that it shall be lawful for persons professing the Roman Catholic religion, personally to appear in the court of *Chancery*, *King's Bench*, *Common Pleas* or *Exchequer*, at *Westminster*, or in any court of *general quarter sessions* of and for the county, city, or place where such person shall reside, and there in open court, between the hours of nine in the morning and two in the afternoon, take, make, and subscribe the declaration and oath.

I A B *do hereby declare that I do profess the Roman Catholic religion.* Declaration.

I A B *do sincerely promise and swear that I will be faithful, and bear true allegiance to his majesty king* George *the third, and him will defend to the utmost of my power against all conspiracies and attempts whatever that shall be made against his person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to his majesty, his heirs and successors, all treasons and traitorous conspiracies which may be formed against him or them; and I do faithfully promise to* Oath.

*maintain, support, and defend, to the utmost of my power, the succession of the crown, which succession by an act entitled "An act for the further limitation of the crown, and better securing the rights and liberties of the subject" is and stands limited to the princess* Sophia, *electress and duchess dowager of* Hanover, *and the heirs of her body, being protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming, or pretending a right to the crown of these realms; and I do swear that I do reject and detest as an unchristian and impious position, that it is lawful to murder or destroy any person or persons whatsoever, for or under pretence of their being heretics or infidels; and also that unchristian and impious principle that faith is not to be kept with heretics or infidels; and I further declare, that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion that princes excommunicated by the pope and council, or any authority of the see of* Rome, *or by any authority whatsoever, may be deposed or murdered by their subjects, or any person whatsoever; and I do promise that I will not hold, maintain, or abet, such opinion, or any other opinions contrary to what is expressed in this declaration; and I do declare that I do not believe, that the pope of* Rome, *or any other foreign prince, prelate, state, or potentate, hath, or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm; and I do solemnly in the presence of God, profess, testify, and declare that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatever, and without any dispensation already granted by the pope, or any authority of the see of* Rome, *or any person whatever; and without thinking that I am or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope, or any other person, or authority whatsoever, shall dispense with or annul the same, or declare that it was null or void.*

So help me God.

Which said declaration and oath shall be subscribed by the person taking and making the same *with the name at length*, if such person can write, or with his mark, the name being written by the officer, where such person cannot write, such person, or officer as the case is, adding the title, addition, and place of abode of such person, and the same shall remain in such court of record. 31 *Geo.* 3. *c.* 32. *s.* 1.

And the proper officer of such court with whom the custody of such record shall remain, shall make, subscribe, and deliver a certificate of such declaration and oath having been duly

made and subscribed, to the person who shall have made and subscribed the same, if demanded, for which certificate there shall be paid no greater fee than 2s. and such certificate, upon proof of the certifier's hand, and that he acted as such officer, shall be competent evidence of such person's having duly made and subscribed such declaration and oath, unless the same shall be falsified. 31 *Geo.* 3. c. 32. s. 1.

And the said officer with whom such records are kept as aforesaid, shall yearly, on or before the 25th *December*, transmit to the clerk of his majesty's most honourable privy council lists of persons, with their titles, additions, and places of abode, who shall have made and subscribed such declaration and oath in the preceding year. s. 2.

Papists may execute offices by deputy.

And if any person professing the Roman Catholic religion shall be chosen to bear the office of high constable, or petty constable, churchwarden, overseer, or any other parochial or ward office, and such person shall scruple to take upon him any of the said offices in regard of the oaths, or other things by law required, every such person may execute such office by a deputy, so as such deputy be allowed and approved in such manner as such officers should by law have been allowed and approved. s. 7.

But not exempt from tithes.

But nothing herein shall exempt any such person from paying tithes or other parochial duties, or any other duties to the church or minister, or from any prosecution for the same. s. 12.

Not to be summoned to take the oaths.

Also no person professing the Roman Catholic religion, who shall take the above oath, shall be summoned to take the oaths of allegiance, supremacy, and abjuration, or prosecuted for not obeying such summons. s. 18, 19.

Papists may act as counsellors, &c.

And the oaths and declaration in 7 & 8 *Wil.* 3. c. 4. and 1 *Geo.* 1. *st.* 2. c. 13 *, mentioned and appointed to be taken and subscribed by persons acting as *counsellor at law, barrister, attorney, solicitor, clerk, or notary*, shall be no longer required to be taken by any person professing the Roman Catholic religion as a qualification to act, but the oath and declaration in this act appointed shall be administered to such persons in the stead and place thereof. s. 22.

Need not register their estates.

Also the acts 1 *Geo.* 1. *sess.* 2. c. 55, and 3 *Geo.* 1. c. 18, and also such parts of all other acts † as require papists to register their names and estates, are wholly repealed; and no person whatsoever shall be prosecuted or otherwise affected for not having complied with the said acts; and all deeds and wills shall, after 24th *June*, 1791, be as good and effectual, both at law and in equity, and to all purposes whatsoever, as if the

* See p. 480. 492 supra.

† Notwithstanding this, some acts to the above purpose are improperly inserted in the last edition of *Burn*.

said repealed acts and parts of acts had never been made. *s.* 21.

For other privileges granted by this act, see the remainder of this title, and in particular, Div. iv.

## II. *What disabilities, restraints, penalties, forfeitures, and inconveniences, Popish recusants are subject to.*

Papists subject to the penalties for not resorting to church.

Persons professing the popish religion are subject to the same punishments and disabilities, for not resorting to their parish church or chapel, or some usual place where the common prayer is used, and also to the same prosecution and penalties for keeping or having in their houses any servant or other person not so resorting, as any other recusants or nonconformists are *, who absent themselves from divine worship in the established church, through *total irreligion*, and attend the service of no other persuasion.

But by the said stat. 31 *Geo.* 3. c. 32, no person professing the Roman Catholic religion, who shall take and subscribe the above mentioned oath, shall be convicted or prosecuted upon any of the statutes, or any other law, or in any ecclesiastical court, for not resorting to his parish church or chapel, or some other usual place of common prayer, or for keeping any servant or other person being a papist, or reputed papist, or person professing the popish religion, who shall not so resort. *s.* 3.

Nevertheless all laws made for frequenting divine service on the Lord's day shall be still in force, and executed against all persons who shall offend against those laws, unless such persons shall come to some congregation or assembly of religious worship, permitted by this act or the toleration act †. *s.* 9.

How far papists are disabled to take an estate in lands.

By 11 & 12 *Will.* 3. c. 4, every person educated in, or professing the popish religion, who shall not within six months after the age of eighteen years, take the oaths of allegiance and supremacy, and subscribe the declaration against popery, mentioned in 30 *Car.* 2. *st.* 2. c. 1 ‡, in the *Chancery* or *King's Bench*, or quarter sessions, where such person shall reside, shall in respect of himself, or herself, only, and not in respect of his or her heirs or posterity, be disabled to inherit, or take by descent, devise, or limitation, in possession, reversion, or

* Viz. under the statutes 1 *Eliz.* c. 2. 23 *Eliz.* c. 1. 29 *Eliz.* c. 6. 35 *Eliz.* c. 2. 2 *Jac.* 1. c. 4. 3 *Jac.* 1. c. 4. 3 *Jac.* 1. c. 5. and 7 *Jac.* 1. c. 6. which see under the title Church, div. ii.

† 1 *Will.* & *Mar.* st. 1. c. 18, See title Dissenters.

‡ See infra.

remainder, any lands, tenements, or hereditaments in *England*, *Wales*, or *Berwick upon Tweed*; and during the life of such person, and until he takes the said oaths, his next of kin being a protestant shall enjoy the same, without being accountable for the profits, but shall not do wilful waste under pain of forfeiting treble damages to the party so disabled; and all papists or persons making profession of the popish religion, are disabled to purchase in their own names, or the names of others to their use or in trust for them; and all estates, terms, and other interest and profits whatsoever, out of lands made to their use, or any trust mediately or immediately for their benefits, are void.

But by 18 *Geo.* 3. *c.* 60, *the above clause* in the statute of *William* the third IS REPEALED; and all persons having or claiming any lands, tenements, or hereditaments under titles not hitherto litigated shall enjoy the same as if the said act had not been made, PROVIDED that all such persons shall, within six calendar months after the passing of this act, or of accruing of his title, being of the age of twenty-one years; or who, being under the age of twenty-one years, shall, within six months after he shall attain the age of twenty-one years, or being of unsound mind, or in prison, or beyond the seas, then within six months after such disability removed, take and subscribe an oath in the following words. *s.* 1. 3, 4.

*I A B do sincerely promise and swear, that I will be faithful and bear true allegiance to his majesty king* George *the third, and him will defend to the utmost of my power against all conspiracies and attempts whatever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his majesty, his heirs and successors, all treasons and traitorous conspiracies which may be formed against him or them: and I do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the crown in his majesty's family, against any person or persons whatsoever; hereby utterly renouncing and abjuring any obedience or allegiance unto the person taking upon himself the style and title of prince of* Wales, *in the lifetime of his father, and who since his death is said to have assumed the style and title of king of* Great Britain, *by the name of* Charles *the third, and to any other person claiming or pretending a right to the crown of these realms: and I do swear, that I do reject and detest, as an unchristian and impious position, that it is lawful to murder or destroy any person or persons whatsoever, for or under pretence of their being heretics; and also that unchristian and impious principle, that no faith is to be kept with heretics. I further declare that it is no article of my faith, and I do renounce, reject, and abjure the opinion, that princes excom-*

*municated by the pope and council, or by any authority of the see of* Rome, *or by any authority whatsoever, may be deposed or murdered by their subjects or any person whatsoever: and I do declare, that I do not believe, that the pope of* Rome, *or any other foreign prince, prelate, state, or potentate, hath, or ought to have, any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm. And I do solemnly in the presence of God profess, testify and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatever, and without any dispensation already granted by the pope, or any authority of the see of* Rome, *or any person whatever; and without thinking that I am, or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope, or any other persons or authority whatsoever, shall dispense with or annul the same, or declare that it was null or void.*

Which oath the court of *Chancery*, or any court of record at *Westminster*, the courts of great sessions within *Wales*, and county palatine of *Chester*, the courts of *Chancery* or *Common Pleas* within the counties palatine of *Lancaster* and *Durham*, or any court of general or quarter sessions in *England* or *Wales*, may administer, and they are to administer the same accordingly: of the taking and subscribing which oaths a register shall be kept in manner prescribed by the laws requiring oaths from persons taking offices and employments. *s.* 4.

Papists not to present to benefices.

The disability of presenting to a church by the statutes of 3 *Jac.* 1. *c.* 5. *s.* 18, 19, 20, 21. & 1 *Will.* & *Mar. c.* 26, extended only to popish recusants convict, and persons refusing to make the declaration against popery mentioned in 30 *Car.* 2. *st.* 2. * 1 *Hawk. c.* 15. *s.* 6.

But it is enacted by 12 *Ann. st.* 2. *c.* 14, that every papist, or person making profession of the popish religion, and every child, not being a protestant, under the age of twenty-one years, of every such papist, and every mortgagee or trustee for any papist, or such child, shall be disabled to present to any ecclesiastical living, school, hospital, or donative, or to grant any avoidance; and every such presentation and grant, and every admission, institution, and induction thereupon, shall be void.; and the university of *Oxford* and of *Cambridge* shall respectively have the presentation. *s.* 1.

That is to say, the chancellor and scholars of the university of *Oxford* shall have the presentation to every such benefice,

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* See infra.

school, hospital, and donative, in the counties of *Oxford, Kent, Middlesex, Sussex, Surrey, Hampshire, Berkshire, Buckinghamshire, Gloucestershire, Worcestershire, Staffordshire, Warwickshire, Wiltshire, Somersetshire, Devonshire, Cornwall, Dorsetshire, Herefordshire, Northamptonshire, Pembrokeshire, Caermarthenshire, Brecknockshire, Monmouthshire, Cardiganshire, Montgomeryshire*, the city of *London*, and in every city or town, being a county of itself, within the limits of the counties aforesaid. 3 *Jac.* 1. *c.* 5. *s.* 19.

The chancellor and scholars of the university of *Cambridge* shall have presentation, *&c.* to every such benefice, school, hospital, and donative, in the counties of *Hertfordshire, Bedfordshire, Cambridgeshire, Huntingdonshire, Suffolk, Norfolk, Lincolnshire, Rutlandshire, Leicestershire, Derbyshire, Nottinghamshire, Shropshire, Cheshire, Lancashire, Yorkshire, Durham, Northumberland, Cumberland, Westmorland, Radnorshire, Denbighshire, Flintshire, Caernarvonshire, Anglesey, Merioneth, Glamorganshire*, and in every city and town being a county of itself lying within the limits of the counties last mentioned. 3 *Jac.* 1. *c.* 5. *s.* 20.

And if any trustee, mortgagee, or grantee of an avoidance shall present or nominate to any such living, free school, or hospital, whereof the trust shall be for any *recusant convict*, or disabled, without giving notice in writing to the university, in three months after the avoidance shall happen, he shall forfeit 500*l.* to the university. 1 *Will. & Mar.* c. 26. *s.* 4.

But the chancellor and scholars shall not present to any such ecclesiastical living, any person who shall then have any other benefice with cure of souls, nor shall the person presented be absent from the same above sixty days in any one year. 1 *Will. & Mar.* c. 26. *s.* 5, 6.

And every grant of any advowson, or right of presentation, collation, nomination, or donation of and to any benefice, prebend, or ecclesiastical living, school or hospital, or donative, and every grant of any avoidance thereof, by any papist or any mortgagee, trustee, or person any ways intrusted directly or indirectly, mediately or immediately, by or for such papist, whether by writing or not, shall be void, unless made *bona fide*, and for a full and valuable consideration to a protestant purchaser; and every devise thereof by any papist, with intent to secure the benefit thereof to the heirs or family of such papist, shall be void. 11 *Geo.* 2. c. 17. *s.* 5.

And by force of the said statutes the ordinary may tender the declaration against transubstantiation to any reputed papist making a presentation, and upon refusal to take the same, the presentation shall be void: also the ordinary may examine every presentee upon oath whether the person who

presented him be the true patron, or only a trustee: and the court wherein a *quare impedit* shall be brought, may in like manner examine the parties; and a bill may be brought by the universities in any court of equity to discover such secret trusts, and the answer of such persons upon any such examination or bill shall be good evidence against such patron, in respect of such a presentation, but not as to any other purpose. 12 *Ann. st.* 2. *c.* 14. *s.* 4, 5, 6. 12 *Geo.* 2. *c.* 17. *s.* 5.

*Hawkins* says, that it does not appear that at any resolution hath been given on either of the above-mentioned statutes of 1 *Will. & Mar.* or 12 *Ann.* but the expositions which were made on 3 *Jac.* 1. seeming to be for the most part applicable to these latter statutes also, it may not be improper to take notice of the principal of them. 2 *Hawk. c.* 15. *s.* 8.

First; that where a presentment is *pro hac vice* vested in the university, by reason of the patron's being a popish recusant at the time when the church became void, it shall not be divested again by his conforming himself to the church. *Co. Rep.* 57, 58.

Secondly; that such a patron is only disabled to present, and that he continues patron as to all other purposes, and therefore that he shall confirm the leases of the incumbent and the like. *Cawley*, 230.

Thirdly; that such a person, by being disabled to grant an avoidance, is no ways hindered from granting the advowson itself in fee, or for life or years, *bona fide*, and for good consideration. 1 *Jones*, 19, 20.

Fourthly; that if an advowson or avoidance belonging to such a person come into the king's hands by reason of an outlawry, or conviction of recusancy, the king and not the university shall present. *Hob. Rep.* 126. 1 *Jones*, 20, 21. *Moor*, 872.

How far papists are disabled to keep school.

By 11 & 12 *Will.* 3. *c.* 4, if any papist, or person making profession of the popish religion, shall be convict of keeping schools or taking upon themselves the education or government, or boarding of youth, in any place within this realm, or the dominions thereunto belonging, they shall be adjudged to perpetual imprisonment. *s.* 3.

But *this clause is repealed* by the above-mentioned stat. 18 *Geo.* 3. *c.* 60, PROVIDED the party shall take and subscribe the oath therein directed * before he shall be apprehended, or any prosecution commenced against him. *s.* 1, 3, 4, 5.

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* See p. 51?, supra.

And by the said stat. 31 *Geo.* 3. *c.* 32, it is farther enacted that no ecclesiastic or other person professing the Roman catholic religion, who shall take and subscribe the oath of allegiance, abjuration, and declaration therein appointed *, shall be prosecuted in any court whatsoever, for teaching and instructing youth as a tutor or schoolmaster. *s.* 13.

But no person professing the Roman catholic religion shall obtain or hold the mastership of any college or school of royal foundation, or of any other endowed college or school for the education of youth, or keep a school in either of the universities of *Oxford* or *Cambridge*. *s.* 14.

And no schoolmaster professing the Roman catholic religion shall receive into his school, for education, the child of any protestant father. *s.* 15.

Also no person professing the Roman catholic religion shall be permitted to keep a school for the education of youth, until his or her name and description as a Roman catholic schoolmaster or school-mistress shall have been recorded at the sessions for the county, division, or place where such school shall be situated, by the clerk of the peace, who is to record the same upon demand, and to give a certificate thereof to such person as shall at any time demand the same. *s.* 16.

And nothing in this act shall make it lawful to found, endow, or establish any school, academy, or college, by persons professing the Roman catholic religion, within these realms, or the dominions thereunto belonging; and all uses, trusts, and dispositions, whether of real or personal property, before 24 *June*, 1791, deemed to be superstitious and unlawful, shall continue to be deemed so.

How far persons professing popery are restrained from saying or hearing mass.

By 23 *Eliz. c.* 1. every person (*except such as shall take and subscribe the oath appointed by* 31 *Geo.* 3. *c.* 32. *s.* 1. 4.) who shall *say or sing* mass, shall forfeit 200 marks and be imprisoned for a year, and till paid.

And every person (*except as above*) who shall wilfully *hear* mass, shall forfeit 100 marks, and be imprisoned for a year. *s.* 4.

And justices of oyer and terminer, of assize and gaol delivery, shall have power to inquire of, hear, and determine the above offence, and justices of peace in their quarter sessions shall also have power to enquire, hear, and determine the same. *s.* 9.

And any person, who shall first discover to any justice of the peace any mass to have been said, and the persons that were present thereat, and the priest that said the same, or any of

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* See p. 509, supra.

them, within three days after the offence, and by reason of such discovery any offender is taken and convicted, such person shall not only be freed from any penalty for such offence, if himself be an offender therein, but shall also have the third part of the forfeitures, if they do not exceed 150*l.* and if they do exceed 150*l.* he shall have 50*l.* and after conviction of the offender, he shall have a certificate from the judges or justices of peace, before whom the conviction shall be, directed to the sheriff or person who shall seize the goods, or levy the forfeiture, commanding him to pay the same. 3 *Jac.* 1. c. 5. *s.* 1.

And every conveyance and judgment to be had of covenous purpose, to defraud any interest that may grow to the crown, or any other person, by any conviction on the stat. 23 *Eliz.* c. 1, shall be void, 23 *Eliz.* c. 1. *s.* 13.

How far persons professing popery are subject to penalties for giving or receiving popish education.

(1) By 1 *Jac.* 1. c. 4, *all persons* under the king's obedience, *which shall go, or send* any child or other person, beyond the seas, out of the king's obedience, *to the intent to be trained up in any colleges, seminary, or house of jesuits, priests, or other popish order, to be instructed in the popish religion,* every person so sending any child or other person, shall forfeit 100*l.* half to the king, and half to him who will sue in any of the courts at *Westminster.* *s.* 6. 9.

And every person so passing beyond the seas shall, as in respect of himself only, and not in respect of his heirs or posterity, be disabled to inherit, purchase or enjoy, any lands, goods, debts, legacies, or sums of money, within his majesty's dominions; and all estates made upon any trust for the benefit of any such person, shall be void. *s.* 6.

Provided that if any person or child, so passing or sent beyond the seas, shall after become conformable and repair to church, such person and child, for such time as he shall continue in conformity, shall be discharged of such disability. *s.* 7.

And no woman or child under twenty-one, except sailors or factors, shall pass over sea, without licence of the king and council, on pain that the officer of the port shall forfeit his office and his goods, the owner of the ship his vessel, and the master his goods, and be imprisoned twelve months. *s.* 8.

(2) By 3 *Jac.* 1. c. 5, if the *children* of any subject (the said children not being soldiers, mariners, merchants, or their apprentices, or factors) shall be *sent or go* beyond sea, to prevent their good education in *England*, or for any other cause, without the licence of the king or six of his privy council (whereof the principal secretary to be one), under their hands and seals; every such child *shall take no benefit by any gift, conveyance, descent, devise, or otherwise*, of or to any hereditament or chattel, till such child, being of the age of eighteen years or above,

take the oath of allegiance before some justice of the county or limit where the parent did and shall inhabit; and in the mean time the next of kin to such child, who shall be no popish recusant, shall have the same, until such child shall conform, and take the said oath, and receive the sacrament; and after such conformity, he who hath received the profits of the said hereditaments shall account for the same, and in reasonable time make payment thereof, and restore the value of the said goods. *s.* 1.

And by the same act, 3 *Jac.* 1, *c.* 5, whoever shall send such child over seas shall forfeit 100*l.* which by 11 & 12 *Will.* 3. *c.* 4. *s.* 6, shall be to the sole use and benefit of the person who shall discover the offence.

(3) The next act on this subject is 3 *Car.* 1. *c.* 2, and this act *being made to render the act* 1 Jac. 1. c. 4. *more effectual, it seems from the comprehensive manner in which it is worded to have superseded the principal provisions in the acts of* Jac. 1. *the penalty of* 100l. *last mentioned excepted.* For it is by this act, 3 *Car.* 1. *c.* 2, enacted, that in case any person, under the obedience of the king, shall go, or send any child or other person out of the king's dominions, into parts beyond the seas, out of the king's obedience, to be trained up in any priory, abbey, nunnery, popish university, college or school, or house of jesuits, priests, or in any private popish family, and shall be there by any jesuit, seminary, priest, friar, monk, or other popish person, instructed, persuaded, or strengthened in the popish religion, or in any sort to profess the same, or shall send any money, or other thing, for the maintenance of such child or person*, or under the colour of any charity, benevolence or alms, towards the relief of any such places aforesaid; every person so sending such child, person, money or other thing, and every person passing or sent beyond the seas, being thereof convicted, upon any information, presentment, or indictment, before the justices of the *King's Bench*, of assize, or gaol delivery, or of *Oyer* and *Terminer*, shall be disabled to sue at law, or in equity, or to be committee of any ward, or executor or administrator, or capable of any legacy, or deed of gift, or to bear any office within the realm; and shall lose and forfeit all his goods and chattels; and shall forfeit all his lands,

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* It is also enacted by 27 *Eliz. c.* 2. *s.* 6, that if any person shall contribute or send over sea any money or other relief to any seminary abroad, such person shall incur a *præmunire.*

And by *s.* 5 of the same act, they who be in seminaries abroad, shall return in six months after proclamation, and conform in two days before the bishop or two justices of peace; otherwise, if they return at all without submission, they shall be guilty of high treason: for this act see title PRÆMUNIRE.

tenements and hereditaments, rents, annuities, offices and estates of freehold, for his natural life. *s.* 1.

But no person sent as aforesaid, that shall within six months after his return conform unto the church of *England*, and receive the sacrament, shall incur any penalty. *s.* 2.

And if any person or child, so passing, or sent, shall after his return conform, during such time as he or she shall so continue in such conformity, shall have his or her lands restored to them again. *s.* 4.

And by 11 & 12 *Will.* 3. *c.* 4, if any popish parent, in order to the compelling of his child, being a protestant, to change his religion, shall refuse to allow him a fitting maintenance, the lord chancellor may make order therein. *s.* 7.

Lastly, by 25 *Car.* 2. *c.* 2, if any persons *not bred up by their parents from their infancy in the popish religion, and professing themselves popish recusants*, shall educate their children, or suffer them to be instructed or educated, in the popish religion; such persons being thereof convicted, shall be disabled of bearing any office or place of trust or profit in church or state;—and *such children shall be disabled* of bearing any such office or place of profit, until they be reconciled to the church of *England*, and take the oaths before the justices of peace in quarter sessions where they shall inhabit, and thereupon receive the sacrament, and obtain a certificate thereof under the hands of two justices. *s.* 8.

But the 31 *Geo.* 3. *c.* 32, *after reciting and taking notice of the foregoing acts*, ENACTS, that no person who shall take and subscribe the oath therein appointed in the manner above mentioned, shall be presented, indicted, sued, impeached, prosecuted, or convicted in any civil or ecclesiastical court, for being a papist, or reputed papist, *or for professing, or being educate in the popish religion**. *s.* 5.

Reconciling others, or being reconciled to popery.

If any person shall put in practice to reconcile any subjects to popery; or if any person shall be willingly so reconciled; he, his aiders and maintainers, shall be guilty of *high treason*, the trial to be at the assizes, or in the *King's Bench*. 3 *Jac.* 1. *c.* 4. *s.* 22, 23. 25.

But by the said stat. 31 *Geo.* 3. *c.* 32, no person who shall take and subscribe the oath therein appointed as above mentioned, shall be presented, indicted, sued, impeached, prosecuted, or convicted for *being a papist*, or reputed papist, or for professing the popish religion. *s.* 4.

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* The restraint imposed on persons not bred in the popish religion by the first part of the clause in the above act 25 *Car.* 2, seems not to be affected by this clause in stat. 31 *Geo.* 3, which evidently extends only to *persons professing, or being educated in the popish religion.*

### III. *What disabilities, restraints, forfeitures, and inconveniences popish recusants convict are subject to.*

Papists, who through a mistaken or perverse zeal may neglect or refuse to qualify themselves in the manner prescribed by the before mentioned stat. 31 *Geo.* 3. *c.* 32, are not only liable to all the foregoing disabilities, penalties, and forfeitures inflicted on *popish recusants*, or persons barely professing the Roman catholic religion; but also to the further disabilities, restraints, forfeitures, and inconveniences, hereinafter mentioned, in case they are convicted in a court of law, of not attending the service of the church of *England;* or in case they refuse to take the oaths of allegiance, supremacy, and abjuration, and make the declaration against popery enjoined by statute 30 *Car.* 2. *st.* 2.

Having premised this, it will be proper to shew

i. *What disabilities they are subject to.*
ii. *What restraints they are under.*
iii. *What forfeitures they are liable to.*
iv. *What inconveniences they are subject to.*
v. *The offence of not taking the oaths, and making a declaration against popery.*

#### i. *What disabilities they are subject to.*

To be deemed excommunicate.

Every popish recusant convict shall be disabled as a person excommunicated, until he shall conform himself, and come to church and receive the sacrament, and take the oath of allegiance; and every person sued by such person disabled, may plead the same in disabling of such plaintiff. 3 *Jac.* 1. c. 5. s. 11.

Provided that it shall be lawful for any such person disabled, to sue any action concerning such of his lands which are not to be seized into the king's hands for his recusancy. *s.* 12.

*Shall be disabled as a person excommunicated.*] Some have gone so far as to hold, that all popish recusants convict may be taken up by the writ *de excommunicato capiendo*, and that they are not to be admitted as competent witnesses in any cause; but *Hawkins* says, this seems to be a construction over severe; for inasmuch as this, like all other penal statutes, ought to be construed strictly, and the words thereof are no more than, that such persons *shall stand disabled as persons excommunicated*, and the purport thereof may be fully satisfied by the *disability to bring any action*, it seems to be too rigorous to carry them further. 1 *Hawk.* c. 12. *s.* 6.

Disabled to present to a benefice.

A popish recusant convict shall be disabled to present or grant any avoidance to any ecclesiastical living, or nominate to any free-school, hospital or donative. 3 *Jac.* 1. *c.* 5. *s.* 18.

And every person who shall refuse to make the declaration mentioned in 30 *Car.* 2. *st.* 2, against popery,* or shall refuse to appear for the making thereof, and shall thereupon have his name certified and recorded at the quarter sessions, shall be disabled to make representation, donation or grant of avoidance, of any ecclesiastical living, as fully as if he were a popish recusant convict. 1 *Will. & Mar. c.* 26. *s.* 1.

And where any persons are seised or possessed of any advowson of any ecclesiastical living, free-school or hospital, in *trust* for any papist or *popish recusant convict*, who shall be convicted or disabled by 3 *Jac.* 1. *c.* 5, or 1 *Will. & Mar. c.* 26, such trustee shall be disabled to present or nominate, or to grant any avoidance thereof. 1 *Will. & Mar. c.* 26. *s.* 3.

And the chancellors and scholars of the universities of *Oxford* and of *Cambridge* shall have the presentation within certain limits. 3 *Jac.* 1. *c.* 5. *s.* 2. 1 *Will. & Mar. c.* 26. *s.* 1.

For which limits, and further provisions in this respect, see p. 514 supra.

Disabled to bear any public office or charge.

No recusant convict shall practise the common law as a counseller, clerk, attorney, or solicitor, nor shall practise the civil law as advocate or proctor, nor practise physic, nor use the trade of an apothecary, nor shall be judge, minister, or clerk, or steward of any court, or keep any court, nor shall be register or town clerk, or other officer in any court, nor shall bear any office, as captain, lieutenant, corporal, serjeant, ancient-bearer, or other office in camp, troop, or company of soldiers, nor shall be captain, master, governor, or bear any office of any ship, castle or fortress of the king; and every person offending herein shall forfeit 100*l.* one moiety to the king, and the other moiety to him that will sue for the same in any of the king's courts of record. 3 *Jac.* 1. *c.* 5. *s.* 8.

No popish recusant convict, nor any having a wife being a popish recusant convict, shall exercise any public office in the commonwealth, except such husband and his children, above the age of nine years, abiding with him, and his servants in household, shall once every month, not having reasonable excuse, repair to some church or chapel for divine service; and the said husband, and such his children and servants as are of meet age, receive the sacrament at such times as are limited by law, and bring up his said children in the true religion. 3 *Jac.* 1. *c.* 5. *s.* 8.

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* See infra.

A popish recusant convict shall be disabled to be executor, administrator, or guardian; but the wardship shall go to the next of kin, not being a recusant, to whom the estate cannot lawfully descend. 3 *Jac.* 1. *c.* 5. *s.* 22, 23.

**Not to be executor, administrator, or guardian.**

Every married woman, being a popish recusant convict (her husband not standing convicted of popish recusancy) which shall not conform herself, but shall forbear to repair to some church or usual place of common prayer, and within the year receive the sacrament by the space of one year next before the death of her husband, shall be disabled to be executrix or administratrix of her husband, and to have any part of her husband's goods by any law, custom, or usage whatsoever. 3 *Jac.* 1. *c.* 5. *s.* 10.

**Disabled to be executrix, or administratrix, or to claim any part of a husband's personal estate or dower.**

And every woman, being a popish recusant convict, who shall be married in other form than according to the orders of the church of *England*, by a minister lawfully authorised, shall be utterly excluded and disabled, not only to claim any dower or jointure, but also her widow's estate and frank bank in her husband's customary lands, and also be disabled to have any part of his goods. 3 *Jac.* 1. *c.* 5. *s.* 12.

And by 26 *Geo.* 2. *c.* 33, if the marriage is any where in *England*, other than in a church or public chapel (unless by special licence from the archbishop of *Canterbury*), or without publication of banns, or licence, the marriage shall be void.

Every man who being a popish recusant convict, shall be married otherwise than in some open church or chapel, and otherwise than according to the orders of the church of *England*, by a minister lawfully authorised, shall be disabled and excluded to have any estate or freehold in the lands of his wife, as tenant by the curtesy*. 3 *Jac.* 1. *c.* 5. *s.* 13.

**Disabled to be tenant by the curtesy.**

And if the marriage is performed otherwise than according to the above act of 26 *Geo.* 2. *c.* 33, as aforesaid, it is void.

### ii. *What restraints popish recusants convict are under.*

By 35 *Eliz.* *c.* 2, every person above the age of sixteen years, and having any certain place of abode within this realm, which being a popish recusant shall be convicted for not repairing to church, and being within this realm, shall within forty days after conviction (if they be not restrained by imprisonment, or by command of the king, or by order of six of the privy council, or by sickness, and in such cases within twenty

**Restrained from going more than five miles from home.**

* Or if his wife have no lands, he shall forfeit 100*l.*

days after they shall be enlarged, and shall be able to travel) repair to their place of abode, and shall not at any time after remove above five miles from thence, upon pain to forfeit all their goods, and also forfeit to the queen all the lands of every such person during the life of the offender, unless they be customary or copyhold, and then to the lord of the manor. s. 3. 5.

And having repaired to their dwelling, they shall within twenty days notify their coming, and present themselves, and deliver their true names in writing to the minister of the parish, and to the constable, and the minister shall enter the same in a book. *s.* 6.

And after, the minister and constable shall certify the same in writing to the next sessions, and the clerk of the peace shall enter the same in the rolls of the sessions. *s.* 7.

But if such person restrained shall be urged by process, or be bound to appear in any of the king's courts, or be sent for by the council, or be bound to render his body to the sheriff on proclamation, he shall incur no penalty for removing for such purpose. 35 *Eliz.* c. 2. s. 13, 14.

And it shall be lawful for the king or for three of his privy council to give licence to a recusant to go out of the compass of the five miles from his place of abode. 3 *Jac.* 1. c. 5. s. 7.

And if any of the persons confined by the statute 35 *Eliz.* c. 2, shall have necessary occasion to go out of the compass of the said five miles, upon licence of *four justices of peace*, with the assent of the bishop, or of the lieutenant or any deputy lieutenant of the county, residing within the county (in which licence shall be specified the cause of the licence, and the time how long the party shall be absent), it shall be lawful for such person to go about such his business, he first taking his oath before the justices, that he had truly informed them of the cause of his journey, and that he shall not make any causeless stay; and every licence in this behalf contrary to this statute shall be void. *Ibid.*

And every person so confined, which shall go above five miles from the place whereunto he shall be confined, not having such licence, and having taken such oath, shall forfeit as a recusant convict, and passing above five miles from the place where he is confined, as in the above statute of 35 *Eliz.* c. 2. *Ibid.*

In the construction hereof it is to be observed, that it has been holden:

First; that the miles shall be computed according to the English manner, allowing 5280 feet or 1760 yards to each mile, and that the same shall be reckoned not by straight lines, as a bird or arrow may fly, but according to the nearest and most usual way. *Cawley*, 130, 131. *Cro. Eliz.* 212. 1 *Hawk.* c. 12. s. 15.

SECONDLY; that the privy council may grant the licence without any special cause or oath, but that the justices cannot. 2 *Hawk. c.* 12. *s.* 13.

THIRDLY; that in pleading a licence of justices of peace, it must be expressly shewn that it was made under their hands and seals; also the cause in particular for which it was granted must be set forth, and the time for which it was limited, and that the party was sworn to the truth of such cause. 2 *Hawk. c.* 12. *s.* 13.

FOURTHLY; that if the same person be both a justice of peace and a lieutenant, he cannot both join in a licence as justice of peace, and also give his assent as lieutenant, but can only act in one capacity. *Cro. Jac.* 352. 1 *Roll. Abr.* 108. *Moor,* 836. 2 *Hawk. c.* 12. *s.* 14.

To conform within three months, or abjure the realm.

And if any such popish recusant (not being a feme covert, and not having lands or annuities, of an absolute estate of freehold, of the yearly value of twenty marks, or goods above the value of 40*l.*) shall not within the above time limited, repair to their place of abode, and notify their coming to the minister and constable as aforesaid, or shall pass above five miles from the same, and shall not, within three months after such person shall be apprehended, conform to the obedience of the laws in coming to church and making public submission, being required by the bishop, or any justice of peace, or by the minister of the parish; such offender, being required by two justices of peace or coroner of the county, shall upon oath (I) abjure this realm

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(I) The ancient form of this oath of abjuration is as follows: *Staund.* 116. *Mir. b.* 1. *Office Cor.* 49.

*THIS hear you, Sir Coroner, that I O O, of ——— in the county of ———, am a popish recusant, and in contempt of the laws and statutes of England, I have refused, and still do refuse to come to their church: I do, therefore, according to the intent and meaning of the statute made in the 35th year of queen* Elizabeth, *late queen of this realm of* England, *abjure the realm of* England; *and I shall haste me towards the port of* A, *which you have given and assigned to me, and that I shall not go out of the highway, leading thither, nor return back again;* and if I do, I will that I be taken as a felon of the king, and that at *A* I will diligently seek for passage, and will tarry there but one flood and ebb, if I can have passage; and unless I can have it in such place, will go every day into the sea up to my knees, assaying to pass over. So help me God and his doom.

But *Dalton* says, that the oath may be taken by the justices of peace in this form, or to this effect:

and all the queen's dominions for ever, and shall depart out of this realm at such port, and within such time, as shall be assigned by the justices or coroner; unless they be stayed by such causes as are allowed in cases of abjuration for felony; and in such cases within such time after, as the law requireth in case of abjuration of felony. *s.* 8.

And every justice of peace and coroner, before whom such abjuration shall be made, shall cause the same to be entered of record, and certify the same at the next assizes or gaol delivery. *s.* 9.

And if such offender shall refuse to make abjuration, or shall not go to such haven, and depart out of this realm, or shall return into any her majesty's dominions without her majesty's licence, he shall be adjudged a felon without benefit of clergy. *s.* 10.

**Restrained from coming to court.**

No popish recusant convict shall come into the court or house where the king or his heir apparent shall be, unless he be commanded so to do by the king, upon pain of 100*l.* half to the king, and half to him who shall discover, and sue for the same in any court of record. 3 *Jac.* 1. *c.* 5. *s.* 2.

And every popish recusant convict who shall come advisedly into, or remain in the presence of the king or queen, or shall come into the court or house where they or any of them reside (unless he have a licence so to do by warrant of six privy counsellors, by order of council, upon urgent occasion therein to be expressed, and so as such licence exceed not ten days, and be first filed in the petty bag for any person to view without fee, and so as he be not licensed for above thirty days in one year), such person shall be disabled to hold or execute any office or place of trust, civil or military, or to sue in law or equity, or to be an executor or administrator, or capable of any legacy or deed of gift, and shall forfeit for every offence 500*l.* to be recovered by him that will sue for the same in any of the courts at *Westminster*, unless such person do, within the term next after his coming or remaining, take the oaths of allegiance and supremacy, and make the declaration against transubstantiation and the invocation of saints, in the court of *Chancery*, between nine and twelve in the forenoon. 30 *Car.* 2. *st.* 2. *s.* 3, 4. 10.

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*You shall swear that you shall depart out of this realm of* England, *and out of all other the king's majesty's dominions, and that you shall not return hither, or come again into any of his majesty's dominions, but by the licence of our said sovereign lord the king, or of his heirs.* So help you God. *Dalton, c.* 81. *s.* 12.

But if any offender shall take the oaths, he shall be discharged of all penalties, except that this shall not extend to restore such person to any office till after one year, nor to discharge the forfeiture of 500*l.* *s.* 11.

Restrained from keeping arms.

All such armour, gunpowder, and munition of whatsoever kind, as any popish recusant convict shall have in his own house, or elsewhere, or in the possession of any other, at his disposition, shall be taken from him by warrant of four justices of peace, at their general or quarter sessions, (except such necessary weapons as shall be allowed him by the said four justices, for the defence of his person or house) and the said armour, gunpowder, and munition so taken, shall be kept at the costs of such recusants in such place as the said four justices at their said sessions shall appoint. 3 *Jac.* 1. *c.* 5. *s.* 27.

And if any such recusant having such armour, &c. or any other person having the same for his use, shall refuse to discover to the said justices or any of them, what he hath, or shall let or hinder the delivery thereof to any of the said justices, or to any other person authorised by their warrant to take the same: then every person so offending shall forfeit his said armour, &c. and also be imprisoned for three months without bail, by warrant from any justice of peace of such county. *s.* 28.

And notwithstanding the taking away such armour, &c. yet such recusant shall be charged with the providing and maintaining of horse and other armour and ammunition, as other subjects, according to their several abilities. *s.* 29.

Restrained from coming within ten miles of London.

All popish recusants, which shall dwell within *London*, or within ten miles of the said city, which shall be indicted or convicted of recusancy, or which shall not repair to some church or chapel and hear divine service, but shall forbear the same three months, shall, within ten days after such indictment or conviction, depart from *London* and ten miles compass of the same, and shall deliver their names to the lord mayor, in case such recusant shall dwell in *London*; and in case he shall dwell in any other county within ten miles of the said city, then to the next justice of peace within ten days after such indictment or conviction, upon pain to forfeit 100*l.* the one moiety to the king, and the other to him that will sue for the same in any of the king's courts of record. 3 *Jac.* 1. *c.* 5. *s.* 4.

iii. *What forfeitures popish recusants convict are liable to.*

Forfeiture of two parts of a jointure or dower.

Every married women being a popish recusant convict, her husband not standing convicted of popish recusancy, who shall not conform herself, and remain conformed, but shall, for-

bear to repair to some church, or usual place of common prayer, and there to hear divine service, and sermon, if any there be, and receive the sacrament of the Lord's Supper, according to the laws of this realm, within one year next before the death of her said husband, shall forfeit to the king the profits of two parts of her jointure and dower of any hereditaments of her husband. 3 *Jac.* 1. *c.* 5. *s.* 10.

Forfeiture of 20*l.* for not receiving the sacrament yearly after conformity.

If any popish recusant convict, who hath conformed himself to the church, shall not receive the sacrament in his own parish church, within one year after his conformity, he shall, for the first year forfeit 20*l.* for the second 40*l.* and for every year after 60*l.* half to the king, and half to him that shall sue in any court at *Westminster*, or before the justices of assize, or general gaol delivery, or before justices of peace at their quarter sessions, by action of debt, bill, plaint, or information. 3 *Jac.* 1. *c.* 5. *s.* 2, 3.

And at the sessions where an indictment for such an offence is taken, the justices shall have power to make proclamation, by which it shall be commanded that the body of the offender shall be rendered to the sheriff, bailiff, or gaoler, before the next sessions; and if he shall not appear of record next sessions, then upon such default recorded, he shall stand convicted. *s.* 7.

And no indictment or other proceeding shall be reversed for want of form, nor by any thing but by direct traverse to the point of not receiving the sacrament. *s.* 16.

But the husband shall not be charged with a penalty for the wife's offence in not receiving the sacrament, nor shall the wife be chargeable for not receiving during her marriage. s. 40.

Forfeiture of 100*l* for an unlawful marriage.

Every man being a popish recusant convict, who shall be married otherwise than in some open church or chapel, and otherwise than according to the orders of the church of *England*, and by a minister lawfully authorised, shall be disabled to have any estate in the lands of his wife, as tenant by the curtesy; *and if she have no lands*, he shall forfeit 100l. half to the king, and half to him that shall sue. 3 *Jac.* 1. *c.* 5. *s.* 13.

And if the marriage shall be any where in *England*, other than in a church or public chapel (unless by special licence from the archbishop of *Canterbury*), or without publication of banns, or licence, the marriage shall be void. 26 *Geo.* 2. *c.* 33.

Forfeiture of 100*l.* for an omission of lawful baptism.

Every popish recusant shall, within one month after the birth of his child, cause the same to be baptized by a lawful minister, according to the laws of this realm, in the open church of the same parish where the child shall be born, or in some other church near adjoining, or chapel where baptism is usually administered; or if by infirmity of the child it cannot be brought to such place, then the same shall within the time aforesaid be baptised by the minister of any of the said places, upon pain that the father if he be living one month after the

birth of such child, or if he be dead within the said month, then the mother of such child, shall forfeit 100*l.* one third part to the king, one other third to the informer, and the other third to the poor. 1 *Jac.* 1. *c.* 5. *s.* 14.

If any popish recusant, not being excommunicated, shall be buried in any other place than in the church, or church-yard, or not according to the laws of this realm, the executors or administrators of such recusant knowing the same or the party that causeth him to be so buried, shall forfeit 20*l.* one third to the king, one third to the informer, or him who shall sue, and one third to the poor. 3 *Jac.* 1. *c.* 5. *s.* 15. Forfeiture of 20*l.* for an unlawful burial.

## IV. *What inconveniences popish recusants convict are subject to.*

Any two justices of the peace, and all mayors, bailiffs, and chief officers of cities and towns corporate in their respective jurisdictions may search the house and lodgings of every popish recusant convict, or for every person whose wife is a popish recusant convict, of popish books and reliques of popery; and if any altar, pix, beads, pictures, or such like popish reliques, or any popish book be found in the custody of such person, as in the opinion of the justices, mayor, or other chief officer shall be unmeet for him or her to have or use, it shall be defaced and burnt, if it be meet to be burnt; and if it be a crucifix, or other relique of any price, the same shall be defaced at the general quarter sessions in the county where it shall be found, and then restored to the owner. 3 *Jac.* 1. *c.* 5. *s.* 26. Their houses may be searched for relics.

If any married woman being a popish recusant convict, shall not, within three months after her conviction, conform herself and repair to church, and receive the sacrament, she may be committed to prison by one of the privy council, or by the bishop of the diocese, if she be a baroness; or if under that degree by two justices of peace (1 Qu.) there to remain until she conform, unless the husband will pay to the king 10*l.* a month for her offence, or else the third part of all his lands and tenements, at the choice of the husband. 7 *Jac.* 1. *c.* 6. *s.* 28. Feme coverts to be committed.

It hath been before shown *, that every recusant, not being a *feme covert*, must, within three months after conviction, either submit and renounce their errors, or if required so to do by four justices, abjure and renounce the realm; and if they do not depart or if they return without the king's licence, that they shall be guilty of felony without benefit of clergy. Recusant conforming.

But a recusant conforming shall be discharged of the penalties, which he might otherwise sustain in respect of his recusan-

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* In. p. 524, 525 supra.

cy, such recusant afterwards taking the sacrament once a year. 1 *Jac.* 4. *s.* 2, 3.

And if the heir of a popish recusant shall be under sixteen at the death of such recusant, and shall after such age become recusant, he shall be charged with the penalties happening to him by reason of such his ancestor's recusancy, until such time as he shall conform. 1 *Jac.* 1. *c.* 4. *s.* 3, 4.

But by 31 *Geo.* 3. c. 32, no person who shall take and subscribe the oath appointed by that act shall be presented, indicted, sued, impeached, prosecuted, or convicted for being a papist, reputed papist, or for professing the popish religion. *s.* 4.

### *V. The offence of not taking the oaths, and making a declaration against popery.*

Offence of not taking the oaths.

If any person that goes to any meeting for the exercise of religion, being required by a justice of peace, shall refuse to take the oaths of allegiance and supremacy, and to make and subscribe the declaration against popery, of 30 *Car.* 2. he shall be committed by the said justice to prison, who is to certify his name to the next quarter sessions; and if he shall at such sessions, again refuse to make and subscribe the said declaration, he shall be deemed, and suffer as a popish recusant convict. 1 *Will. & Mar.* c. 18. *s.* 12. *

And two justices may summon any person whom they shall suspect to be disaffected, by writing under their hands and seals, to appear before them at a time prefixed, to take the oaths of allegiance, supremacy, and abjuration, which summons shall be served on such person, or left at his dwelling house, or usual place of abode with one of the family there; and if such person shall neglect or refuse to appear, then on due proof made upon oath of serving the said summons, they shall certify the same to the next sessions, to be there recorded; and if such person shall neglect, or refuse to appear and take the oaths at the said sessions (his name being publicly read at the first meeting of the said sessions), he shall be taken and adjudged a popish recusant convict, and the same shall be from thence certified by the clerk of the peace, into the *Chancery* or *King's Bench*, to be there recorded. 1 *Geo.* 1. *st.* 2. *c.* 13. *s.* 10, 11 †.

But by 31 *Geo.* 3. c. 32, no person [*that is, no person professing the Roman catholic religion who shall take and subscribe the oath of allegiance, abjuration, and declaration in that act*

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* See this act under title Dissenters, in vol. i. p. 655.
† See this act under title Oaths.

*appointed* *] shall be summoned to take the oath, and make the declaration above mentioned, or be prosecuted for not obeying such summons. *s.* 18.

Persons not making the declaration against popery, disabled from sitting in parliament.

By 30 *Car.* 2. *st.* 2, no peer shall vote, or make his proxy in the house of peers, or sit there during any debate; nor any member of the house of commons shall vote in the house, or sit there during any debate after their speaker is chosen, until such peer or member shall first take the oaths of allegiance and supremacy (and also the oath of abjuration, 1 *Geo.* 1. *st.* 2. c. 13. *s.* 16) and subscribe and repeat this declaration following:

Form of the declaration against popery.

*I* A B *do solemnly and sincerely, in the presence of God, profess, testify and declare, that I do believe, that in the sacrament of the Lord's supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever, and that the invocation or adoration of the Virgin* Mary, *or any other saint, and the sacrifice of the mass, as they are now used in the church of* Rome, *are superstitious and idolatrous. And I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by* English *protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am, or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope, or any other person or persons, or power whatsoever, should dispense with, or annul the same, or declare that it was null and void from the beginning.*

Which oaths and declarations shall be made betwixt nine in the morning and four in the afternoon, by every such peer at the table in the middle of the house, and whilst a full house of peers is there with the speaker in his place; and by every member of the house of commons at the table in the middle of the house, and whilst a full house of commons is there sitting with their speaker in his chair; and the same shall be done in either house in like order, as each house is called over. *s.* 2.

Disabled from coming to court.

And every peer of this realm, and of the kingdom of *Scotland*, or of *Ireland*, being of the age of twenty-one years, not having

* These words placed within brackets are not inserted in the act itself, but from the evident intent and meaning thereof, they seem to be necessary.

taken the said oaths and made the declaration; and every member of the house of commons, not having taken the oaths and made the declaration, who shall advisedly come into, or remain in the presence of the king or queen, or shall come into the court, or house where they are, or any of them reside, shall incur the penalties, (that is to say, he shall be disabled to hold any office, or place of profit, or trust, civil or military, in *England*, or *Ireland*, *Wales*, or *Berwick*, or in any of his majesty's islands or plantations, and shall be disabled to sit or vote in parliament, or make a proxy in the house of peers, or to sue in law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift; and shall forfeit for every wilful offence 500*l.* to be recovered by him that shall sue for the same in any of his majesty's courts at *Westminster*, *s.* 4,) unless such peer or member do in the next term take the oaths, and make the declaration in *Chancery* between nine and twelve in the forenoon. 30 *Car.* 2. *st.* 2. *s.* 3.

But by 31 *Geo.* 3. c. 3, no peer of *Great Britain* or *Ireland*, or member of the house of peers of *Great Britain*, or of the kingdom of *Ireland*, professing the Roman catholic religion, who shall take and subscribe the oath of allegiance, declaration, and abjuration, by the said act 31 *Geo.* 3. c. 32 appointed *, shall be liable to be prosecuted for advisedly coming into, or remaining in the presence of the king or queen, or coming into the court where any of them reside. *s.* 20.

Restrained from living within ten miles of *London*.

And it is required that the lord mayor of *London*, and every justice of peace of *London*, *Westminster*, *Southwark*, *Middlesex*, *Surrey*, *Kent* (and *Essex*, 1 *Will.* & *Mar.* c. 17), shall cause to be arrested and brought before him every person not being a merchant foreigner, or a menial servant to some ambassador or public agent, (*or a person who shall have taken and subscribed the oath and declaration appointed by* 31 Geo. 3. c. 32. s. 19,) within the said cities or ten miles of the same, reputed to be papists, and tender him the declaration in 30 *Car.* 2. *st.* 2; and in case such person refuse to make the declaration, and shall after such refusal continue within the said cities, or ten miles distance from the same, he shall suffer as a popish recusant convict. 1 *Will.* & *Mar.* c. 9. *s.* 2. 4.

And every justice of peace shall certify every subscription before him taken, and the names of every person refusing, into the *King's Bench* next term, or at the next quarter-sessions; and if the person so refusing and certified, shall not within the next term or sessions appear in the *King's Bench* or sessions, where such certificate shall be returned, and make the declara-

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* See p. 509. supra.

tion, and indorse his so doing upon the certificate *, he shall be adjudged a popish recusant convict. *s.* 3.

Restrained from keeping arms.

And any two justices, who shall know or suspect, or shall be informed, that any person is or is suspected to be a papist, may, and shall tender to him the declaration in 30 *Car.* 2+; and if he shall not appear, after notice by warrant under hand and seal given to him, or left at his usual place of abode, or shall not make and subscribe the declaration, he shall be disabled to have or keep in his house or elsewhere, or in the possession of any other to his use, any arms, gunpowder, or ammunition, except such weapons as shall be allowed by the sessions for the defence of his house or person. And any two justices may, by warrant, authorize in the day-time any person, with the constable's assistance, to search such person's house for the same, and seize them for the use of the king; and the said justices shall deliver the same in open court at the next sessions for the use aforesaid; where also they shall certify the name and place of abode of every person so subscribing, or not subscribing. 1 *Will. & Mar. c.* 15. *s.* 2, 3, 4.

And every such person not discovering and delivering them up to some justice in ten days after default in not appearing, or not subscribing as aforesaid, or hindering the seizure, shall be committed to gaol by any two justices for three months, and shall forfeit the arms and pay treble value of them to the king, to be appraised by the justices at the next session. 1 *Will. & Mar. c.* 15. *s.* 5.

And every other person who shall conceal, or knowing thereof, not discover to a justice such arms or ammunition, or shall hinder the seizing thereof, shall be committed to gaol by two justices for three months, and shall forfeit to the king the treble value of the arms. 1 *Will. & Mar. c.* 15. *s.* 6.

And every person who shall discover such arms or ammunition, so as they shall be seized, shall have a reward equal to the value thereof ordered by the sessions, out of the goods of the offender, to be levied by distress. 1 *Will. & Mar. c.* 15. *s.* 7.

Not to keep a horse above 5*l.* value.

And every papist making default in not appearing, or not subscribing (as in the said clause respecting arms, gunpowder, and ammunition) shall not have or keep in his possession, or in the possession of any other to his use or at his disposition, any horse above the value of 5*l.* to be sold, and two justices may authorize any person, with the constable's assistance, to seize all such horses for the king's use. 1 *Will. & Mar. c.* 15. *s.* 9.

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* Or make and subscribe the declaration in 31 *Geo.* 3. *c.* 32. as above.

+ See p. 531, supra.

And if any person shall conceal, or assist in concealing, any such horse, he shall be committed by warrant of two justices to prison for three months, and shall forfeit to the king treble the value of such horse. 1 *Will. & Mar.* c. 15. s. 10.

### VI. *What disabilities, restraints, penalties, forfeitures, and inconveniences, popish priests are subject to.*

Coming into the realm.

By 27 *Eliz.* c. 2, it shall not be lawful for any jesuit, seminary priest, or other priest, deacon, or religious, or ecclesiastical person being born within her highness's dominions, and ordained or professed by any authority from the see of *Rome*, to come into or to remain in her highness's dominions, other than in cases expressed in this act; and if he do, such offence shall be high treason. s. 3.

Receiving them.

And every person who shall wittingly and willingly receive, comfort, aid, or maintain any such jesuit, or priest, being at liberty, shall be adjudged a felon without benefit of clergy. s. 4.

Conforming.

But this act shall not extend to any such jesuit, seminary priest or other ecclesiastical person as shall within three days, after he shall come into this realm, submit himself to some bishop, or to some justice of the peace within the county where he shall arrive, and take the oath of supremacy, and under his hand acknowledge and continue his due obedience to her highness's laws in causes of religion. s. 10.

Not discovering them.

Every subject of this realm, which shall know that any such jesuit or other priest above said shall be within this realm contrary to this act, and shall not discover the same to some justice of peace, or other higher officer, within twelve days, but willingly conceal his knowledge therein, such offender shall make fine, and be imprisoned at the queen's pleasure. And if such justice of peace, or other officer, to whom such matter shall be discovered, do not, within twenty-eight days, give information thereof to some of the privy council, he shall forfeit two hundred marks. s. 13.

Refusing to answer.

And a suspected jesuit, or popish priest, being lawfully examined, and refusing to answer, whether he be a jesuit or popish priest, shall be imprisoned, till he make direct and true answer. 35 *Eliz.* c. 2. s. 11.

Reward for discovering them.

And such person as shall first discover to any justice of peace any person which shall entertain, or relieve any jesuit, seminary or popish priest, or shall discover any mass to have been said, and the persons that were present, and the priest that said the same, within three days after the offence committed, and by such discovery any offender shall be taken and convicted, such person shall not only be freed from any penalty for such offence,

if himself be an offender therein, but shall also have the third part of the forfeitures, if they do not exceed 150*l.* and if they do exceed 150*l.* then he shall have 50*l.* 3 *Jac.* 1. *c.* 5. *s.* 1.

And priests saying mass subject to perpetual imprisonment.

And it was farther enacted, by 11 & 12 *Will.* 3. *c.* 4, that every person who shall apprehend any popish bishop, priest, or jesuit, and prosecute him to conviction for saying mass, or exercising any other part of the function of a popish bishop, priest, or jesuit, shall receive 100*l.* of the sheriff; and that every such popish bishop, priest, or jesuit (except being a foreigner, he be entered into the secretary of state's office, and officiate only in the house of a foreign minister), shall be adjudged to perpetual imprisonment. *s.* 2, 3, 4, 5.

Upon what conditions tolerated.

" But by 18 *Geo.* 3. *c.* 60, it is enacted that the abovementioned clauses of 11 & 12 *Will.* 3. shall be repealed, provided such popish bishop, priest, or jesuit shall have taken and subscribed the oath in p. 421 supra, before he shall have been apprehended, or any prosecution commenced against him. *s.* 1, 2. 5.

" And finally, by 31 *Geo.* 3. *c.* 32, no person who shall take and subscribe the oath in p. 417 supra, in manner hereby required, shall be presented, indicted, sued, impeached, prosecuted, or convicted for saying mass, or for being a priest or deacon, or entering in or belonging to any ecclesiastical order or community of the church of *Rome*, or for being present at, or performing, or observing any rite, ceremony, practice, or observance of the popish religion, *or maintaining* or assisting others therein. *s.* 4.

Priests taking the oaths exempted from serving on juries or parish offices.

" And every priest or other person in holy orders, or pretended holy orders, being a minister, teacher, or preacher of any congregation of persons professing the Roman catholic religion, who shall take and subscribe the said oath and declaration, shall from thenceforth be exempted from serving upon any jury, or from being chosen or appointed to bear the office of churchwarden, overseer, or any other parochial, or ward, or other office. *s.* 8.

Roman catholic meeting-houses to be recorded at sessions.

" But no place of congregation, or assembly for religious worship, shall be allowed by this act, until the place of meeting be certified to the general or quarter sessions of the county, city, or place where such meetings shall be held, and until the place of such meeting be recorded there; the clerk of the peace whereof is to record the same, and to give a certificate thereof to such person as shall demand the same, for which no greater fee than sixpence shall be taken. *s.* 5.

And also the names of all priests.

" And no persons in holy orders, or pretended holy orders, whether as priest or as a minister of any other higher rank or order, shall perform any ecclesiastical function, or otherwise officiate in any such meeting until his name and description as a priest or minister, shall have been recorded at

"the said general or quarter sessions by the clerk of the peace, "who is to record such name and description accordingly, upon "demand, and upon payment of sixpence as a fee, and to give "a certificate thereof to such person as shall from time to time "demand the same, for which certificate no greater fee than "two shillings shall be taken. *s.* 5.

"And no priest or minister who shall officiate in any such "place of meeting not so recorded, shall be deemed to be with-"in the benefit of this act, for any purpose whatsoever. "*s.* 5.

Meeting-houses not to be locked.

"Also if any assembly of persons professing the Roman ca-"tholic religion shall be had in any place for religious wor-"ship, with the doors locked, barred, or bolted during any "time of such meeting, all persons who shall be at such "meeting shall not receive any benefit from this law; but not-"withstanding having taken the oath aforesaid, shall from the "time of conviction be liable to the same pains and penalties "for such their meeting, as if this act had not been made. "*s.* 6.

Disturbing congregations.

"And if any person shall maliciously or contemptuously "come into any place of religious worship permitted by this "act, and disquiet or disturb the same, or misuse any priest, "minister, preacher, or teacher therein, such person on proof "thereof before any justice of the peace, by two witnesses, "shall find two sureties of the peace, to be bound by recogni-"zance, in the penal sum of 50*l.* and in default of such sureties "shall be committed to prison, there to remain till the next "general or quarter session, and upon conviction of the said "offence at the said session, shall suffer the penalty of 20*l.* to "the king. *s.* 10.

Cases to which the act is not to extend.

"But no benefit in this act shall extend to any Roman ca-"tholic ecclesiastic permitted by this act, who shall officiate in "any place for religious worship permitted by this act, with "a steeple and bell;—or at any funeral in any church or church "yard;—or who shall exercise any of the rites or ceremonies "of his religion, or wear the habits of his order, save within "some place for religious worship permitted by this act, or in a "private house, where there shall not be more than five per-"sons assembled, besides those of the household;—or who "shall not previously to his so officiating have taken and sub-"scribed the oath and declaration aforesaid. *s.* 11.

"And nothing herein shall be construed to exempt any per-"son professing the Roman catholic religion, from paying tithes "or other parochial duties, or any other duties to the church "or minister, or from any prosecution in any ecclesiastical court "or elsewhere for the same;—or to repeal any part of 26 *Geo.* "2. *c.* 33, for preventing clandestine marriages;—or to give "any ease, benefit, or advantage to any person who shall, by "preaching, teaching, or writing, deny or gainsay the oath

"oath and declaration before mentioned, or the declarations or "doctrines therein contained;—or to repeal or affect any law "now in force concerning the right of succession to, or the limi- "tation of the crown. *s.* 12.

No religious order to be founded.

"And nothing in this act shall make it lawful to found, en- "dow, or establish any religious order or society of persons "bound by monastic or religious vows within these realms or "the dominions thereto belonging; and all uses, trusts, and "dispositions, whether of real or personal property, which im- "mediately before *24th June*, 1791, shall be deemed to be "superstitious or unlawful, shall continue to be deemed so. "*s.* 17.

"And it is further enacted by 43 *Geo.* 3. *c.* 30, that the "declaration and oath expressed and contained in 31 *Geo.* 3. "*c.* 32, shall, as to all persons who shall make, take and sub- "scribe the same, give the same benefits and advantages, and "operate to and for the same intents and purposes, as by the "stat. 18 *Geo.* 3. *c.* 60, is declared of and concerning the oath "thereby prescribed."

For the offence of making use of papal bulls—suing in the court of *Rome*—appealing to *Rome* from any of the king's courts—maintaining the pope's power—bringing in *agnus dei*, crosses, or the like—contributing to the maintenance of a popish seminary, see the title PRÆMUNIRE.

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# PARDON.

By whom grantable.

IT seems that anciently the right of pardoning offences within certain districts was claimed by the lords of marches, and others, who had *jura regalia*, by certain grants from the crown, or by prescription. *Co. Lit.* 114. 3 *Inst.* 233.

But now by 27 *Hen.* 8. *c.* 24, no person whatsoever shall have power to pardon or remit any treasons or felonies whatsoever, nor any accessaries to the same, nor any outlawries, for such offences; but the king shall have the whole and sole power and authority thereof united and knit to the imperial crown of this realm, as of good right and equity it appertaineth. *s.* 1.

It is therefore now clearly established that the power of par-

doning offences is inseparably incident to the crown. *Shower*, 284.

And this is one of the great advantages of *monarchy*, in general, above any other form of government; that there is a magistrate, who has it in his power to extend mercy, wherever he think it is deserved; holding a court of equity in his own breast, to soften the rigour of the general law, in such criminal cases as merit an exemption from punishment. 4 *Black. Com.* 397.

And this high prerogative the king is intrusted with, upon a special confidence that he will spare those only, whose case, could it be foreseen, the law itself may be presumed willing to have excepted out of its general rules, which the wisdom of man cannot possibly make so perfect as to suit every particular case. *Shower*, 284. 2 *Hawk.* c. 37. *s.* 8.

It will be proper therefore to consider

I. *In what cases a pardon may be granted.*

II. *Where it is grantable of common right.*

III. *The manner of pardoning.*

IV. *How pardons are to be taken advantage of.*

V. *The effects and consequences of a pardon.*

## I. *In what cases a pardon may be granted.*

According to Sir *Ed. Coke*, a pardon is a work of mercy, whereby the king forgiveth any crime, offence, punishment, execution, right, title, debt, or duty temporal, or ecclesiastical. 3 *Inst.* 233.

And it seems to be a settled rule, that the king may pardon any offence whatsoever *after it is committed*, whether it be against the common or statute law, so far as the public is concerned in it, * and this either before the attainder, sentence, or conviction, or after. 3 *Inst.* 233. 2 *Hawk.* c. 37. *s.* 33. *Comyns's Dig. tit. Par.* (A)

But it seems agreed, that the king cannot by any previous

* Except in parliamentary impeachments as hereafter mentioned.

licence, pardon, or dispensation, make an offence dispunishable, which is unlawful in itself, as being either against the law of nature, or so far against the public good, as to be indictable at common law; and that a grant of this kind, tending to encourage the doing of evil, which it is the chief end of government to prevent, is plainly against reason and the common good, and therefore void.* 2 *Hawk. c.* 37. *s.* 28.

And upon this principle it seems agreed, that if one be bound by recognizance to the king, to keep the peace against another by name, and generally all other lieges of the king; in this case before the peace be broken, the king cannot pardon or release the recognizance, although it be made only to him, because it is for the benefit and safety of his subjects. 3 *Ins* 238.

Neither can the king, by any charter whatsoever, bar any right of entry or action, or any legal interest or benefit, *actually vested* in the subject; and therefore it seems clear, that he cannot bar any action on a statute by the party grieved. 2 *Hawk. c.* 37. *s.* 34.

Nor even a popular action commenced *before his pardon*, for *after* an action popular is brought, the king can but discharge his own part, and cannot discharge the informer's part; because by bringing of an action, the informer hath an interest therein, 2 *Hawk. c.* 37. *s.* 34. 3 *Inst.* 231.

Yet before the action is brought, the king may discharge the whole (unless it be provided to the contrary by the act), because the informer cannot bring an action or information originally for his part only, but must pursue the statute. 3 *Inst.* 231.

Neither can the king pardon, where private justice is principally concerned in the prosecution of offenders. 4 *Black. Com.* 398.

Therefore in appeals of all kinds (which are the suit, not of the king, but of the party injured) the king cannot pardon, except only where it is carried on at the suit of the king, after a nonsuit of the party, in which case it may be barred by a pardon in the same manner as an indictment. 2 *Hawk. c.* 37. *s.* 35.

For as the release of a person robbed, or of the wife, or heir of the party killed will not bar an indictment, or a demand of execution at the suit of the king; so neither will a pardon by the king be any bar to an appeal †. 2 *Hawk. c.* 37. *s.* 35.

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* It is also expressly enacted by 1 *Will. & Mar. sess.* 2 *c.* 2, that no *dispensation* by *non obstante* of or to any statute, or any part thereof, shall be allowed; but that the same shall be void and of none effect, except a dispensation be allowed in such statute.

† And yet the punishment of the offender may in this case be remitted and discharged by the concurrence of all parties interested; namely, by a release from the appellant, and a pardon by the king. 1 *Hale's Hist.* 9.

Yet it hath been strongly holden, that the king may pardon the burning of the hand on a conviction of manslaughter on an appeal, as being no part of the judgment at the suit of the party, but a collateral and exemplary punishment inflicted by statute, and intended only by way of satisfaction to the public justice, and to notify that the party may have his clergy but once. 3 *Inst.* 237. *Hobart*, 294. 2 *Hawk. c.* 37. *s.* 39.

There are also in some cases, even where the king is sole party, some things which he cannot pardon; such as common nuisances for not repairing highways or the like: for although the prosecution for redress and reformation thereof is in such cases vested in the king only, to avoid multiplicity of suits; yet this offence itself savours more of the nature of a *private* injury to each individual in the neighbourhood, than of a public wrong; and therefore it is settled, that the king cannot pardon either the nuisance, or the suit for the same, because such pardon would take away the only means of compelling a redress of it; but it hath been holden by some, that a pardon of such an offence will save the party from any fine, for the time precedent to the offence. 3 *Inst.* 238. 2 *Hawk. c.* 37. *s.* 33. 4 *Black. Com.* 398.

There is also a restriction of a peculiar nature that affects the prerogative of pardoning, in case of parliamentary impeachments, viz. that the king's pardon cannot be *pleaded* to any such impeachment, so as to impede the inquiry, and stop the prosecution of great and notorious offenders. 4 *Black. Com.* 399.

For it was insisted by the house of commons, in the earl of *Darby's* case *, and it is enacted by 12 & 13 *Will.* 3. *c.* 2, that "no pardon under the great seal be pleaded to an impeachment by the commons in parliament."

But after the impeachment has been solemnly heard and determined, it is not understood that the king's royal grace is further restrained or abridged; for after the impeachment and attainder of the six rebel lords in 1715, three of them were from time to

* In this case the *Earl* was impeached by the house of commons of high treason and other misdemeanors, and pleaded the king's pardon in bar of the same. The commons alleged, "that there was no precedent that ever any pardon was granted to any person impeached by "the commons of high treason, or other high crimes, "depending "the impeachment," and therefore resolved, that the pardon so pleaded "was illegal and void, and ought not to be allowed in bar of the impeachment of the commons of England; for which resolution they assigned this reason to the house of lords, that the setting up a pardon to "be a bar of an impeachment, defeats the whole use and effect of impeachments; for should this point be admitted, or stand doubted, it "would totally discourage the exhibiting any for the future, whereby "the chief institution for the preservation of the government would "be destroyed. *Com. Journ.* 28 *Ap.* 5 *May*, and 26 *May*, 1679. 4 *Black. Com.* 399.

time reprieved by the crown, and at length received the benefit of the king's most gracious pardon. 4 *Black. Com.* 400.

Also to preserve the liberty of the subject, the committing any man to prison out of the realm, is by the *habeas corpus* act, 31 *Car.* 2. *c.* 2 *, made a *præmunire, unpardonable* even by the king. 4 *Black. Com.* 398.

But it seems that a pardon will not only discharge any suit in the spiritual court *ex officio*; but also any suit in such court between party and party, for the reformation of manners, or welfare of the soul, as for defamation, or laying violent hands on a clerk, and such like; for such suits are in truth the suits of the king, though prosecuted by the party. 5 *Co. Rep.* 51. *Comyns's Dig. tit. Par.* (E. 1.) 2 *Hawk. c.* 37. *s.* 41.

Also it seems agreed that if the time, to which the pardon has relation, be prior to the award of costs to the party, or as it is generally holden, if it be subsequent to the award but prior to the taxation, it shall discharge them; because nothing appears in certain to be due for costs before they are taxed. 2 *Hawk. c.* 37. *s.* 41.

But after taxation they shall not be discharged by a subsequent pardon. 2 *Hawk. c.* 37. *s.* 42.

And it seems that if a person be imprisoned on a writ of *excommunicato capiendo* for his contumacy in not paying costs, and afterwards the king pardon all contempts, he shall be discharged of such imprisonment, because it is grounded on the contempt, which is wholly pardoned; and the party must begin anew to compel a payment of the costs. 2 *Hawk. c.* 37. *s.* 42.

But it seems agreed that a pardon shall not discharge a suit in the spiritual court any more than a temporal, for a matter of interest or property in the plaintiff, as for tithes, legacies, or the like. 2 *Hawk. c.* 37. *s.* 42.

### *II. Where it is grantable of common right.*

A pardon is grantable of common right—First, to persons found guilty of excusable homicide—Secondly, to certain felons and other offenders who discover their accomplices—Thirdly, to persons to whom the king has by proclamation promised his pardon—Fourthly, to an approver who hath convicted an appellee.

Persons found guilty of excusable homicide.

First; *as to persons found guilty of excusable homicide.*] By the stat. of *Gloucester*, 6 *Ed.* 1. *c.* 9, it is enacted, that if it be found by the county, that a person tried for the death did it in his defence, or by misfortune, then by the report of the justices to the king, the king shall take him to his grace, *if it please him.*

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* See title Commitment.

Although at first sight, it seems to be implied that it is left to the discretion of the king, whether he will grant a pardon in such a case or not; yet it is settled, that the words *if it shall please the king*, are only out of reverence, and were not intended to make the right of the subject to such a pardon precarious: it has therefore been long settled, that in such case a pardon is grantable of right. 2 *Hawk. c.* 37. *s.* 2.

And it is said, that upon removing the record by *certiorari*, he shall have a pardon and writ of restitution of his goods, as a matter of course and right, only paying for suing out the same. 1 *Hawk. c.* 29. *s.* 25. 2 *Hawk. c* 37. *s.* 2.

But to prevent this expence in cases where the death has notoriously happened by misadventure, or in self-defence, the judges will usually permit, if not direct, a general verdict of acquittal. 4 *Black. Com.* 188. *Foster's Cr. L.* 288.

Highwaymen discovering two accomplices.

Secondly; *as to certain felons and other offenders, who discover two or more accomplices.*] 1. By 4 & 5 *Will & Mar. c.* 8, if any person or persons being out of prison, shall commit any robbery, and afterwards discover two or more who then had, or afterwards shall commit any robbery,* so as two or more of the persons discovered shall be convicted of such robbery, such discoverer shall himself have, and is thereby intitled to his majesty's pardon, for all robberies which he shall have committed before such discovery. *s.* 7.

Clippers and coiners discovering accomplices.

2. By 6 & 7 *Will.* 3. *c.* 17, If any person shall be guilty of clipping, coining, counterfeiting, washing, filing, or otherwise diminishing the coin of this realm, and afterwards discover two or more, who then had, or afterwards shall commit any of the said crimes, so as two or more of the persons discovered shall be convicted, such discoverer shall have his majesty's pardon, for all such crimes by him before committed; and if he be an apprentice, he shall become free, and may use his trade. *s.* 12.

And by 15 *Geo.* 2. *c.* 28. *s.* 8, whoever being out of prison shall commit any of the offences in this act (*viz. alter shillings and sixpences to make them resemble guineas and half-guineas, or half-pennies and farthings to make them look like shillings and six-pences; or utter false money a third time after two former convictions, or twice in one day, or within ten days after, or counterfeit any of the copper money*), and shall afterwards discover two or more persons who shall have committed any of the said offences, so as two be thereof convicted, such discoverer shall have his majesty's pardon for such his offences.

Burglars, house-breakers, horse-stealers, and shoplifters.

3. Also it is enacted by 10 & 11 *Will.* 3. *c.* 23, that if any person or persons shall commit any burglary, house-breaking,

* That is, an highway robbery.

or felony, in stealing of any horse or horses, or any money, wares or goods, from whom the benefit of clergy is by the said act taken away,* *and being out of prison*, shall discover two or more who then had, or after shall commit any such offence as aforesaid, and shall be convicted thereof, or cause to be discovered and apprehended two or more, who shall be convicted as aforesaid, every such discoverer shall have his majesty's pardon for the burglaries, housebreakings, horse-stealings, or felonies as aforesaid, which he or she, or they shall have committed at any time before such discovery made; which pardon shall be likewise a good bar to an appeal for any such offence. *s.* 5.

And it is further enacted by 5 *Ann*, *c*. 31, that every person who shall be guilty of burglary, or of the felonious breaking and entering any house in the day-time, and after shall discover two who shall have committed such offence, so as they be convicted, shall have 40*l*. and be entitled to his majesty's pardon for all burglaries and felonies (murder and treason, unless in the case of coining, as above excepted), which pardon shall also be a bar to any appeal. *s*. 4.

The foregoing acts relate only to persons who are at large; and to entitle themselves to a pardon, they must actually convict two offenders at the least; for if their confession be such on their trial as the jury gives no credit to, they are liable to prosecution. *Cowper's Rep*. 335.

4. Also by 5 *Geo*. 3. *c*. 14, if any person who shall be guilty of any of the offences in this act mentioned, viz. of stealing or destroying fish in private waters,† shall surrender himself to one justice of the county where the offence shall have been committed, or being apprehended, or in custody for the same, or any other offence, shall voluntarily make a confession thereof, and a true discovery upon oath of his accomplice or accomplices, so as he or they be taken, and shall on their trial give evidence of such offence sufficient to convict such accomplice or accomplices; such person making such discovery, and giving such evidence, shall be pardoned of the offence by him confessed. *s*. 2.

Persons stealing fish out of private waters.

5. Also by 12 *Geo*. 3. *c*. 48, if any offender against that act, viz. by using stamps a second time,‡ being out of prison, shall discover one or more persons who have committed the same offences, so as such person or persons be convicted, he shall be entitled to his majesty's pardon. *s*. 2.

Persons guilty of frauds in respect to stamps, discovering accomplices.

6. Also by 8 *Geo*. 2. *c*. 20, if any person shall commit any of the offences declared to be felony by this act, viz. by de-

Persons destroying locks discovering other offenders.

* See title Felony.
† See title Felony (within Clergy, § *Fish*).
‡ See title Felony (within Clergy, § *Stamps*).

stroying locks on navigable rivers,* and being out of prison, shall discover and apprehend, or cause to be discovered and apprehended one or more like offenders, so as he, she, or they, be thereof convicted, every such person on the conviction of such offenders shall have his majesty's pardon for the felonies aforesaid, which he shall have committed before such discovery; which pardon shall be likewise a bar to any appeal. *s.* 5.

Offenders apprehending and prosecuting others guilty of opposing the execution of process in the *Mint*.

7. Also by 6 *Geo.* 1. *c.* 28, if any apprehender or prosecutor of persons opposing the execution of process, in *Suffolk Place* or the *Mint*,† is guilty of any such offence himself, every such apprehender and prosecutor, not being in prison, and convicting two such offenders, shall have a reward of 40*l.* and his majesty's pardon for any of the said offences by him committed before such discovery. *s.* 8.

Smugglers apprehending and convicting accomplices.

8. Also by 6 *Geo.* 1. *c.* 21.‡ persons to the number of eight, and armed, resisting officers of the customs, discovering within two months after the offence, and before their conviction, two or more of their accomplices to the commissioners of customs, shall have upon conviction 40*l.* for each accomplice, and a pardon of his own offence. *s.* 36.

And by 8 *Geo.* 1. *c.* 18, any runner of foreign goods, who shall within two months, and before conviction, discover two accomplices so as the value of the goods recovered for the king's use exceed 50*l.* shall have on the conviction of the accomplices 40*l.* for each offender, and a pardon of his own offence. *s.* 7.

Also by 9 *Geo.* 2. *c.* 35, if any offender, who shall have assembled armed to be aiding in the running of goods, being three or more in company, shall within three months after his offence, and before conviction, discover two or more of his accomplices to the commissioners of customs or excise, so as they be convicted, the offender discovering shall have a reward of 50*l.* for every offender so discovered and convicted, and likewise be acquitted and discharged of his own offence. *s.* 12.

And by 19 *Geo.* 2. *c.* 34. *s.* 10, 11, persons apprehending or discovering any person guilty of any of the offences in this act,§ against whom a proclamation shall have issued under this act for his surrender, shall have 500*l.* and if any accomplice not proclaimed shall himself discover and apprehend any other

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* See title Felony (without Clergy, § *Locks*).

† See title Felony (within Clergy, § *Pretended privileged places*).

‡ For a full abstract of this and the following acts, respecting smugglers, see title Smuggling, div. iv.

§ Viz. persons assembling armed, to the number of three, to assist in the illegal exporting, or running of goods, or appearing in disguise with such goods, or who shall resist officers in the execution of their duty, from whom the benefit of clergy is taken by the acts. See title Smuggling.

offender, he *shall be pardoned*, and have a share of the reward; also, if any of the said offenders before order in council for their surrender, shall discover two or more of his accomplices to the commissioners of customs or excise, so as they be brought to justice and convicted, the offender so discovering shall have a reward of 50*l.* for every offender discovered or convicted, and be acquitted and discharged of his own offence, and all other like offences before committed.

Persons stealing lead, iron, copper, brass, bell-metal or solder, discovering the receiver thereof.

9. Also by 29 *Geo.* 2. *c.* 30*, if any person being out of prison, shall commit any felony by stealing any lead, iron, copper, brass, bell metal, or solder, and afterwards discover two or more persons, who shall buy the same, knowing the same to be stolen, so as two or more of the persons discovered shall be convicted of such buying, or receiving, he or she so discovering shall be entitled to his majesty's pardon, for all such felonies by him or her committed at any time before such discovery, which pardon shall be a bar to any appeal brought for such felony. *s.* 8.

And if any person shall be concerned in the stealing any such articles, and shall afterwards, being out of prison, discover any person to whom he shall have offered to sell, pawn, or deliver any stolen lead or other articles aforesaid, so as such person be convicted of the misdemeanor of not apprehending and carrying him before a justice, then the person making such discovery shall not be liable to be prosecuted for stealing the lead or articles so offered as aforesaid. s. 9.

Persons stealing part of the cargo of any vessel in the *Thames*, discovering the buyers and receivers thereof.

10. Also by 2 *Geo.* 3. *c.* 28†, if any person out of prison shall discover two or more persons who bought or received any part of the cargo or loading of, or any goods, stores, or things of or belonging to any ship or vessel in the river *Thames*, knowing the same to be stolen or unlawfully come by, so as such persons discovered be convicted, he shall have the pardon of his majesty for all former felonies by him committed before such discovery made, which shall also be a bar to any appeal for such felony. *s.* 14.

Felons under fifteen discovering the buyers and receivers of stolen goods.

11. Also by 22 *Geo.* 3. *c.* 28, if any person being out of custody or in custody, if under fifteen years of age, upon any charge of felony, without benefit of clergy, shall have committed any felony, and shall afterwards discover two or more persons who shall have bought or received any goods feloniously stolen from any other person, knowing the same to have been stolen, so as the person discovered shall be convicted, he shall have the king's pardon, for all felonies by him

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* See title Felony (within Clergy,) § *Buyers and receivers of stolen goods.*

† See title Felony (within Clergy,) § *Buyers and receivers of stolen goods.*

committed before such discovery, which shall likewise be a bar to any appeal for such felony. *s.* 5.

Accomplices discovering of counterfeits of lottery orders.

12. And it is usual to insert in the acts which establish and regulate state-lotteries, a clause whereby accomplices discovering an offender in counterfeiting lottery orders, are intitled to a pardon.

Persons promised a pardon by the king's proclamations.

Thirdly; *as to persons to whom the king has by proclamation promised his pardon.*] It is clear that all persons to whom the king has by special proclamation in the gazette or otherwise promised his pardon, and who come in under the royal faith and promise, have a right to a pardon. *Cowper's Rep.* 334.

Approvers convicting an appellee.

Fourthly; *as to an approver who hath convicted an appellee.*] It hath been already shewn in the first volume * in what manner an approver who convicts the appellee is entitled to a pardon; and as the practice of admitting of approvers hath long since been wholly disused, it is unnecessary to enlarge on that subject in this place.

King's evidence only entitled to a recommendation to mercy not to a pardon of right.

But it is to be observed, that a practice has been introduced and adopted in analogy to the old law of approvement, by which an accomplice *may be entitled to a recommendation to the king's mercy, but not to a pardon as of legal right*, which he may plead in bar, or avail himself of on his trial. It is where an accomplice having made a full and fair confession of the whole truth, is in consequence thereof admitted evidence for the crown, and that evidence is afterwards made use of to convict the other offenders. If he act fair and openly, and discover the whole truth, though he is not entitled of right to a pardon, yet the usage, the practice, and the lenity of the court is to stop the prosecution against him; and he has an equitable title to a recommendation for the king's mercy:—it holds out a kind of hope, that accomplices who behave fairly, and disclose the whole truth, and bring others to justice, should escape punishment and be pardoned. *Cowper's Rep.* 336.

But a justice of the peace cannot pardon the offender, and tell him he shall be a witness against others; he cannot select whom he pleases to pardon or prosecute; and the prosecutor has even a less pretence to select than the justice of peace. However, although the justices deceive the accomplice under a promise or assurance, or hope of pardon from them, which in strictness they have no right to make, yet if he make a full and fair disclosure, at the time of his examination, of all he knows, he will be intitled to a recommendation to mercy, and the *King's Bench* will in this case bail him, in order that he may apply for the king's pardon; or the justices of gaol delivery, on all the

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* Under the title Approver.

circumstances relative to the prisoner's claim of indemnity being laid before them, will exercise their discretion in deferring the trial accordingly. *Cowper's Rep.* 336.

### III. *The manner of pardoning.*

Pardons are either *general* or *special.* 3 *Inst.* 233.

General pardons.

*General* pardons are commonly made by act of parliament; and have been of late years very rarely granted by the crown, without a particular description of the offences intended to be pardoned. 2 *Hawk. c.* 37. *s.* 9.

Special.

*Special* pardons are either of *course* and *common right,* as noticed in the preceding division of this title, or of *grace* and favour. 3 *Inst.* 233.

Ought to be under the great seal.

And it seems that these pardons ought to be under the great seal: for a warrant under the privy seal, or sign manual, though it may be a sufficient authority to admit the party to bail, in order to plead the king's pardon, when obtained in proper form, yet it is not of itself a complete irrevocable pardon. 5 *St. Tri.* 166. 173. 1 *Black. Rep.* 480. 4 *Black. Com.* 400.

However, the method of pardoning on the circuit and at the *Old Bailey,* is this: A sign manual issues, signifying the king's intention of either an absolute or conditional pardon, and directing the justices of gaol delivery to bail the prisoner, in order to appear and plead the next general pardon that shall come out, which they do accordingly; taking his recognizance to perform the conditions of the pardon, if any. 1 *Black. Rep.* 479.

May be conditional.

For it seems agreed, that the king may extend his mercy on what terms he pleases, and consequently may annex to his pardon any condition that he thinks fit, whether precedent or subsequent, on the performance whereof the validity of the pardon will depend. 2 *Hawk. c.* 37. *s.* 45.

And this prerogative is daily exerted in the pardon of felons, on condition of being confined to hard labour for a stated time, or of transportation to some foreign country for life, or for a term of years; such transportation or banishment being allowable and warranted by the *habeas corpus* act.* 4 *Black. Com.* 401.

But if the party do not perform the condition of the pardon, the pardon becomes void, and he may be taken and executed on the first judgment. *Moor, Pl.* 662.

For the condition of the king's pardon being gone, the party remains precisely in the same situation that he was the moment before the pardon was granted, and being brought up to the

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* See 31 *Car.* 2. *c.* 2. *s.* 14.

bar, he may be remanded to his former sentence. *Leach's Cr. L.* 73. 220. 330.

Pardon gained by imposition.

It seems also to be laid down as a general rule, that wherever it may be reasonably intended, that the king when he granted such pardon, was not fully apprized both of the heinousness of the crime, and also how far the party stands convicted thereof upon record, the pardon is void, as being gained by imposition upon the king. 2 *Hawk. c.* 37. *s.* 8.

It therefore seems agreed that, if it appears from the recital of a pardon, that the king was misinformed either as to the nature of the case, or the proceedings thereupon, the pardon is void; as where the king pardons a man for felony whereof he stands indicted, or indicted and attainted, and in truth he never was indicted or attainted. 1 *Hawk. c.* 37. *s.* 46.

And in this respect it is expressly enacted by 27 *Ed.* 3. *c.* 2, that in every pardon of felony granted at any man's suggestion, the suggestion and the name of him that makes it shall be comprized: and if it be found untrue, the charter shall be disallowed, and the justices before whom the charter shall be alleged, shall inquire of the same suggestion, and if they find it untrue, shall disallow the charter.

By what words there will be a pardon.

General words have also a very imperfect effect in pardons. 4 *Black. Com.* 400.

Therefore if a man attainted of felony get a pardon, which doth not mention the attainder, the pardon will be ineffectual, because it shall be intended the king had not conusance of the attainder, but was deceived in the grant. 2 *Hawk. c.* 37. *s.* 8.

Also it hath been holden, that the pardon of one who is convicted by verdict of a felony is not good, unless it recite the indictment and conviction. 2 *Hawk. c.* 37. *s.* 8.

Also it hath been questioned, whether the pardon of one who is barely indicted of felony be good, if it do not mention the indictment: however, if the pardon contain the words *whether indicted or not*, this will be helped. 2 *Hawk. c.* 37. *s.* 8.

But it seems that a pardon of all felonies is pleadable to any felony whatsoever, except murder, rape, and piracy. 2 *Hawk. c.* 37.

And the reason that a pardon of all felonies will not include piracy is, that it is no felony punishable at the common law, but only an offence of a special nature by the civil law, subjected by statute to the like punishment as felony. 2 *Hawk. c.* 37. *s.* 11. 1 *Hawk. c.* 37. *s.* 6. 4 *Black. Com.* 400.

But in respect to *murder*, *rape*, and also *treason*, the stat. 13 *Ric.* 2. *stat.* 2. *c.* 1, enacts, that no pardon shall be allowed for MURDER, *or for the death of a man slain by await, assault, or*

*malice prepensed* *, TREASON †, or RAPE of a woman, unless the same offence be specified in the same charter, and if it be for the death of a man, that the party was murdered or slain by await, assault, or malice prepensed ‡.

And it seems that no pardon of felony shall be carried beyond the express purport of it; and therefore according to *Hawkins*, if the king reciting an attainder of robbery, pardon the execution, he thereby neither pardons the felony itself, nor any other consequence of it besides the execution. 2 *Hawk. c.* 37. *s.* 12.

But it hath been adjudged, that where a general act of pardon expressly pardons all petit treasons, but excepts murder, it cannot be avoided by indicting one for murder only, without the word *traitorously*, who has been guilty of petit treason, for the less offence being included in the greater is pardoned by the pardon of it; and therefore such an exception of murder is to

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* From whence it seems plain, that pardons of manslaughter, or any other felony, except murder or rape, remain as they were at common law, and therefore the pardon of the felonious killing of *J J* may be well pleaded to an indictment of manslaughter for killing him. 2 *Hawk. c.* 37. *s.* 18.

† But it is said, that felony is included in treason; and that a pardon of all felonies discharges an indictment of high treason, if it wants the words *proditorie* or *traitorously*. 1 *Hawk. c.* 25. *s.* 2.

‡ Upon this statute, it is observed by Sir *Ed. Coke*, that it was not the intention of the parliament, that the king should ever pardon murder under these aggravations; and therefore they prudently laid the pardon under these restrictions, because they did not conceive it possible that the king would ever excuse an offence by name, which was attended with such high aggravations. 3 *Inst.* 233. 236. 4 *Black. Com.* 400.

And it is remarkable enough, that there is no precedent of a pardon in the register for any other homicide, than that which happens *se defendendo* or *per infortunium*; to which two species the king's pardon was expressly confined, by stat. 2 *Ed.* 3. *c.* 2, which declares that "charters "of pardon shall not be granted, but where the king may do it by his "oath, that is to say, where a man slayeth another in his own defence, "or by misfortune." 4 *Black. Com.* 401.

But the above stat. of 3 *Ric.* 2. *st.* 2. *c.* 1, enlarges by implication on the royal power, provided the king is not deceived in the intended object of his mercy; and therefore pardons of *murder* were always granted with a *non obstante*, or dispensation of the statute of king *Richard*, till the time of the revolution, when the doctrine of *non obstantes* ceasing *, it was doubted whether murder could be pardoned generally; but it was determined by the court of *King's Bench*, that *the king may pardon on an indictment of murder*, as well as a subject may discharge an appeal. 4 *Black. Com.* 401. *Salk.* 499.

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* See stat. 1 *Will. & Mar. sess.* 2. *c.* 2, in p. 539 supra, note †

be intended of such murder only as is specially so called, and doth not amount to petit treason. 2 *Hawk. c.* 37. *s.* 19.

Neither doth the exception of murder in a general act of pardon of all felonies, extend to a *felo de se*; for though this offence be in strictness murder, yet in common speech, the offences *felo de se* and of murder are generally understood as distinct offences; therefore, the word *murder* shall in such an exception be taken only to signify the murder of another. 2 *Hawk. c.* 37. *s.* 20.

Also it hath been adjudged, that if a general act of pardon extend to *all felonies*, offences, injuries, misdemeanors, and other things done before such a day, it pardons manslaughter from a wound given before that day, although the party died not till after the day, and the felony was not till then complete; for the stroke which is the cause of the death being pardoned, all the effects of it are consequently pardoned. *Plowden*, 401. 1 *Hale's Hist.* 426. 2 *Hawk. c.* 37. *s.* 21.

And the true sense of the doctrine, in the above case, is this, that if the felony has its commencement before the pardon takes place, but not its completion, the pardon shall operate in favour of the prisoner *, as it would have done, had the felony been complete before the pardon. *Foster's Cr. L.* 65. 67.

But if a man gives a stroke or poison, which, till death ensues upon it, is only a misdemeanor, and a pardon is granted of all *misdemeanors*, but not of murder, or of poisoning, and afterwards the party dies, the felony itself is not pardoned, because it is expressly excepted. *Ibid.*

And it hath been adjudged, that a pardon of all misprisions, trespasses, offences, and contempts will pardon a contempt in making a false return, and a striking in *Westminster Hall*, and barretry, and even a *præmunire*; also it is laid down in general, that it will pardon any crime which is not capital. 2 *Hawk. c.* 37. *s.* 26.

But the king's grant of a protection, or of a place of trust to a traitor or felon, does not carry with it an *implied pardon* of his crime; for it is generally agreed, that a protection granted to a felon shall be so far from enuring as a pardon, that it shall not so much as privilege him from answering immediately to an indictment in the same manner as if he had no protection at all. 3 *Hawk. c.* 37. *s.* 25.

And it was solemnly adjudged in Sir *Walter Raleigh's* case that the king's grant of a military command to a person attainted of high treason, wherein he called him his true and loyal subject, and gave him judicial power over the lives of others, did not pardon the high treason, because every pardon of high trea-

* For a general pardon shall be expounded most strongly against the king, and for the benefit of the subject. 5 *Co. Rep.* 48. 50. a.

son requires an express mention of it, if not by the common law, at least by the *stat.* 13 *Ric.* 2* : besides, if the offence had been but felony, yet after an attainder, it could not have been pardoned without an express mention both of the felony, and also of the attainder. † 2 *Hawk. c.* 37. *s.* 25.

Notwithstanding all felonies are several, yet the felony of one man may be so far dependant on that of another, that the pardon of the one will necessarily enure to the benefit of the other, as where the principal is allowed his pardon before his conviction, in which case the accessary may by a necessary consequence take benefit of it, because he cannot be arraigned till the principal is convicted. 2 *Hawk. c.* 37. *s.* 22. Who may take the advantage of a pardon.

But it seems agreed, that the pardon of *A B* and *C* of all felonies by them done, without adding or *any of them*, is void, because it supposes them jointly guilty, and extends to no other but joint felonies, whereas all felony is several in each offender, and cannot be joint. 2 *Hawk. c.* 37. *s.* 24.

And if the king release to a man all debts, this shall not discharge his partner, though it is otherwise in the case of a subject, where the release to one discharges both. 3 *Inst.* 238.

But it is agreed, that if a man be bound to the king as surety for another, for the payment of a certain fine or other debt due to the crown, the pardon of the principal is a discharge of the surety also. 2 *Hawk. c.* 37. *s.* 23.

## *IV. How pardons are to be taken advantage of.*

A pardon by act of parliament is more beneficial than by the king's charter. 4 *Black. Com.* 402. How a general pardon by act of parliament is to be taken advantage of.

For if it contain no exceptions, the court must take notice of it *ex officio*, and the party is not bound to plead it. 3 *Inst.* 333. *Foster's Cr. L.* 43, 4.

Neither can he lose the benefit of it by his own *laches* or negligence, as he may of the king's charter of pardon; for a pardon by act of parliament cannot be waived, because no one by his admittance can give the court power to punish him, where it judicially appears there is no law to do it. 4 *Black. Com.* 402. 2 *Hawk. c.* 37. *s.* 58. 61.

Also where a general act of pardon excepts certain kinds of crimes, there is no need to aver that the crime whereof a person is indicted, is not one of such excepted crimes; but the court ought judicially to take notice whether it be excepted or not. 2 *Hawk. c.* 37. *s.* 62.

So where such a statute excepts only one particular person, it hath been said, that there is no need of an averment, that a

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* See this stat. in p. 548 supra.
† See p. 548 supra.

person indicted is not such person, but that the court is to take notice whether he be or not. *Cro. Eliz.* 125. 2 *Leon.* 26.

But if the body of a general act of pardon either except divers persons by name, or except all who come under a general description, as all who adhered to *J S*, the court is not bound (neither ought it as some say) to give any one the advantage of it, unless he plead it, and shew, in the first case, that he is not one of the persons excepted, and in the other, that he is not included in such description; neither will it be safe for him, if he be of the same name, without adding that he is a different person from such other of the same name. 2 *Hawk.* c. 37. s. 60.

And it is to be observed, that where a general act of pardon excepts some particular kinds of felony, such exception extends as well to those whereof any persons are attainted as others; for if those whose guilt appears not on record are excepted, much greater reason is there that those whose guilt appears in so high a manner should be excepted. 6 *Co. Rep.* 13. *Sum.* 251. 3 *Inst.* 238. 1 *Hawk.* c. 37. s. 13.

How a pardon under the great seal is to be taken advantage of.

*As to the taking advantage of a particular pardon under the great seal*, the party must insist on the benefit thereof by specially pleading the same. 3 *Inst.* 233.

It therefore hath been adjudged to be error, to allow a man the benefit of such a pardon, unless it be pleaded. *Cro. Eliz.* 153.

The party also ought to plead it at a proper time; for where one who has such a pardon is indicted, and doth not plead it, but puts himself upon his trial by pleading the general issue, he shall not afterwards resort to the pardon, for he hath waived the benefit thereof*. 4 *Black. Com.* 402. 2 *Hawk.* c. 37. s. 59.

Also no such pardon can be pleaded, together with the general issue. 2 *Hawk.* c. 37. s. 67.

But if the pardon be of a date subsequent to the time of pleading such issue, the party may avail himself of the benefit thereof. 2 *Hawk.* c. 37. s. 67.

And in that case it may be pleaded in arrest of judgment, or in bar of execution; for a man may have the benefit thereof as soon as by course of law he may. 4 *Black. Com.* 402.

Also anciently by *stat.* 10 *Ed.* 3. c. 2, no pardon of felony could be allowed, without a writ of allowance, testifying that the party had found sureties for the good behaviour before the

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* And herein it also differs from a general pardon by act of parliament; the benefit whereof cannot be waived, as has been above observed.

sheriff and coroners of the county; but that statute is now repealed by 5 & 6 *Will. & Mar. c.* 13, which provides that "the "justices before whom any pardon for felony shall be pleaded, "may in discretion remand or commit the party to prison, till "he shall enter into a recognizance, with two sufficient sureties, "for the good behaviour for any term not exceeding seven "years, provided that if such person be an infant, or *feme co-"vert*, he or she may find two sufficient sureties, who shall en-"ter into a recognizance for his or her being of the good be-"haviour as is aforesaid."

### *V. The effects and consequences of a pardon.*

It seems to be settled at this day, that the pardon of a treason or felony even after a conviction or attainder, does so far clear the party from the infamy, and all other consequences of his crime, that he may not only have an action for a scandal in calling him traitor or felon after the time of the pardon, but may also be a good witness, notwithstanding the attainder or conviction, because the pardon makes him as it were a new man, and gives him a new capacity and credit. 2 *Hawk. c.* 37. *s.* 48.

And it hath been admitted that the king's pardon of the burning of the hand on a conviction of manslaughter, hath the same effect as to this purpose, as the burning would have had. 2 *Hawk. c.* 37. *s.* 49.

And it is agreed that the burning in the hand for all clergyable felonies operates as a kind of statute pardon, and gives the party a new capacity and credit. 4 *Black. Com.* 373. 2 *Hawk. c.* 33. *s.* 129. 2 *Hale's Hist.* 389.

And when any offender shall be transported, and shall have served his term, according to the order of the court, such service shall have *the effect of a pardon*, to all intents and purposes, as to the crime for which he was so transported, and shall have so served. 4 *Geo.* 1. *c.* 11. *s.* 2.

Also it was holden by the late chief justice *Holt*, that the king's pardon will remove a man's disability to be a witness in all cases whatsoever, wherein it is only the consequence of the conviction or judgment against him, and not an express part of the judgment. 2 *Salk.* 514, 689.

Therefore, if one found guilty on an indictment for *perjury* at *common law*, be pardoned by the king, he will be a good witness, because the king has power to take off every part of the punishment. *Bull. N. P.* 292.

However, the credit due to the testimony of such a polluted character must in every case be left to the jury.

But if a man be indicted of perjury on *the statute* it is otherwise; and the king cannot pardon him, for he is divested of

that prerogative by the express words of the statute*. *Bull. N. P.* 292.

And it seems that a pardon is of no manner of purpose, as to these purposes, till it have passed the great seal. 2 *Hawk.* c. 37. s. 50.

Also it is said, that the pardon of a felony will not make an arrest for it, by one who did not know of the pardon, unlawful, because such arrests being for the public good are to be favoured, and therefore shall not be actionable by reason of such a pardon, as scandalous words shall be, because they deserve no favour. *Hobart*, 67. 82.

And it seems to be a settled rule, that no pardon by the king, without express words of restitution, shall divest either from the king or subject, an interest either in lands or goods, vested in them by an attainder or conviction precedent. 2 *Hawk.* c. 37. s. 54.

But it seems agreed, that a pardon prior to a conviction shall prevent any forfeiture either of lands or goods. 2 *Hawk.* c. 37. s. 54.

It also seems agreed, that if the pardon be not allowed till *after attainder* of treason or felony, it will not salve or restore the corruption of blood†. *Co. Lit.* 8. 3 *Hale's Hist.* 358. 4 *Black. Com.* 402. 2 *Hawk.* c. 37. s. 57.

For a restitution of blood in its true nature and extent, can only be by act of parliament‡. *Co. Lit.* 8. 1 *Hale's Hist.* 358. 4 *Black. Com.* 402.

And therefore if a man attainted be pardoned *by act of parliament*, he is totally restored, and inheritable to all persons; but if he be pardoned by charter, he may thenceforth purchase lands, but cannot inherit his former relations; for the king's charter cannot alter, or take away the right of others, or restore the relation that was lost. *Co. Lit.* 8. 1 *Hale's Hist.* 358.

Therefore, if a man be attainted, and after pardoned by charter, the children born before such pardon shall not inherit;—but if they fail, the children born after such pardon may inherit him; for the pardon makes him capable of new relations, as well as of new purchases, though all the old legal benefits and relations are lost. *Noy*, 170. *Co. Lit.* 391. 1 *Hale's Hist.* 358. 4 *Black. Com.* 402.

*Parish.* See **Poor**.

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* See title Perjury.

† Corruption of blood does not take place before attainder. See title Attainder.

‡ And restitutions by parliament (which are to be construed liberally and extensively) are of two kinds; one a restitution only in blood, which only removes the corruption thereof, but restores not to the party attaint, or his heirs, the manors or honours lost by the attainder unless it specially extend to it; the other is a general restitution, not only in blood, but to the lands of the party attaint. 1 *Hale's Hist.* 358.

# PARLIAMENT.

THE original or first institution of parliaments is one of those matters which lie so far hidden in the dark ages of antiquity, that the tracing of it out is a thing equally difficult and uncertain. 1 *Black. Com.* 147.

For although it seems probable that there was in the most early periods something of the nature of a parliamentary assembly*, yet it does not appear how such assemblies were constituted or composed.

It seems however to be generally agreed, that in the main, the constitution of parliament, as it now stands, was marked out so long ago as the seventeenth year of king *John, anno Dom.* 1215, in the great charter granted by that prince; wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons personally; and all other tenants in chief under the crown, by the sheriff and bailiffs, to meet at a certain place with forty days notice, to assess aids and scutages when necessary. 1 *Black. Com.* 149.

And this constitution has subsisted in fact, at least from the year 1266, *anno* 49 *Hen.* 3, there being still extant writs of that date to summon knights, citizens, and burgesses to parliament. 1 *Black. Com.* 149. *Simeon's L. Elec.* 3.

I shall therefore, without attempting to investigate with minuteness the rise and progress of parliamentary representation, *which cannot be supposed to have been so matured at the above early period as to have existed in the same perfect manner as at this day* †, endeavour to shew wherein consists this constitution of parliament as it now stands.

*I. Of what persons the parliament consists.*

*II. The manner and time of its assembling.*

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* It appears that these assemblies were held under the several names of *michel synoth* or great council, *michel gemote*, or great meeting, and more frequently *wittena gemote*, or the meeting of wise men. It was also stiled in Latin, *commune concilium regni, magnum concilium regis curia magna, conventus magnatum vel procerum assisa generalis*, and sometimes *communitas regni Anglia*. Glanville, b. 13, c. 32, b. 9, c. 10. 2 Inst. 526. 1 Black. Com. 147, 148. Co. Lit. 110.

† *Simeon's L. El.* 5.

*III. Elections—*

i. *The qualifications of the electors.*

ii. *The qualifications of the elected.*

iii. *The proceedings at elections.*

*IV. Method of passing bills.*

*V. Privilege of parliament.*

*VI. The continuance, adjournment, prorogation, and dissolution of the parliament.*

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## *I. Of what persons the parliament consists.*

*In all* TYRANNICAL GOVERNMENTS *the supreme magistracy, or the right of both making and of enforcing the laws, is vested in one and the same man, or one and the same body of men; and wherever these two powers are united together, there can be* NO PUBLIC LIBERTY. The magistrate may enact tyrannical laws, and execute them in a tyrannical manner, since he is possessed, in quality of dispenser of justice, with all the power which he as legislator thinks proper to give himself. 1 *Black. Com.* 146.

But where the legislative and executive authority are in distinct hands, the former will take care not to entrust the latter with so large a power, as may tend to the subversion of its own independence, and therewith of the liberty of the subject. 1 *Black. Com.* 146.

With us therefore in *England* this supreme power is divided into two branches; the one legislative, to wit, the parliament consisting of king, lords, and commons; the other executive, consisting of the king alone. 1 *Black. Com.* 146.

And it is highly necessary for preserving the balance of the constitution that the executive power should be a branch, though not the whole of the legislative; for the total union of them, as before observed, would be productive of tyranny; and the total disjunction of them, for the present, would in the end produce the same effects, by causing that union against which he seems to provide. 1 *Black. Com.* 154.

In that case the legislature would soon become tyrannical by making continual encroachments, and gradually assuming to itself the rights of the executive power *. 1 *Black. Com.* 154.

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* As an instance in that respect, *Blackstone* mentions the long par-

To hinder therefore any such encroachments, the king is himself a part of the parliament; and as this is the reason of his being so, very properly therefore the share of legislation, which the constitution has placed in the crown, consists in the power of *rejecting*, rather than *resolving*; this being sufficient to answer the end proposed: the crown has therefore not any power of *doing* wrong, but merely of *preventing* wrong from being done. 1 *Black. Com.* 154.

The crown cannot begin of itself any alterations in the present established law; but it may approve or disapprove of the alterations suggested and consented to by the two houses. The legislative thereof cannot abridge the executive power of any rights which it now has by law, without its own consent; since *the law must perpetually stand as it now does, unless* ALL *the powers will agree to alter it.* 1 *Black. Com.* 154.

And herein indeed consists the true excellence of the *English* government, that *all the parts of it form a mutual check upon each other.* In the legislature, the people are a check upon the nobility, and the nobility a check upon the people; by the mutual privilege of rejecting what the other has resolved: while *the king is a check upon both*, which preserves the executive power from encroachments. And this very executive power is again checked, and kept within due bounds by the two houses, through the privilege they have of inquiring into, impeaching, and punishing the conduct (not indeed of the king, which would destroy his constitutional independence*, but which is more beneficial to the public) of his evil and pernicious counsellors. 1 *Black. Com.* 155.

Thus every branch of our civil polity supports, and is supported, regulates, and is regulated, by the rest; for the two houses naturally drawing in two directions of opposite interest, and the prerogative in another still different from them both, they mutually keep each other from exceeding their proper limits, while the whole is prevented from separation, and artificially

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liament of *Charles* the first, which, while it acted in a constitutional manner, with the royal concurrence, redressed many heavy grievances, and established many salutary laws; but when the two houses assumed the power of legislation, in *exclusion of the* royal authority, they soon after resumed likewise the reins of administration, and in consequence of *these united powers*, overturned both church and state, and established a worse oppression than any they pretended to remedy. 1 *Black. Com.* 154.

* For if the two houses of parliament, or either of them, had avowedly a right to animadvert on the king, or each other, or if the king had a right to animadvert on either of the houses, that branch of the legislature, so subject to animadversion, would instantly cease to be part of the supreme power; the balance of the constitution would be overturned: and that branch, or branches, in which this jurisdiction resided, would be completely sovereign. 1 *Black. Com.* 244.

connected together by the mixed nature of the crown, which is a part of the legislative, and the sole executive magistrate. Like three distinct powers in mechanics, they jointly impel the machine of government in a direction different from what either, acting by itself, would have done; but at the same time in a direction partaking of each, and formed out of all; a direction which constitutes *the true line of the liberty* and happiness of the community. 1 *Black. Com.* 155.

Of a constitution so wisely contrived, so strongly raised, and so highly finished, it is hard, saith Sir *William Blackstone*, to speak with that praise, which is justly and severely its due; but he adds that its protection is a duty which we owe to ourselves who enjoy it; to our ancestors who transmitted it down; and to our posterity who will claim at our hands, this, the best birth-right and noblest inheritance of mankind. 4 *Black. Com.* 44.

*The constituent parts of a parliament are therefore, the king, the lords of parliament, and the commons.* Co. Lit. 109, b.

The king. And the king and these estates together form the great corporation or body politic of the kingdom, of which the king is said to be *caput, principium, et finis**. 4 *Inst.* 1, 2, 3. 1 *Black. Com.* 153.

Lords spiritual. The lords of parliament (who sit together with the king in one house) are of two sorts, viz. spiritual and temporal. *Co. Lit.* 109. b.

The lords *spiritual* consist of two archbishops, and twenty-four bishops, who set in parliament by succession, in respect of their counties or baronies, parcel of their bishopricks. 4 *Inst.* 1. 45.

And when any parliament is holden, each of them is to have a writ of summons *ex debito justitiæ*. 4 *Inst.* 1.

But though these lords *spiritual* are in the eye of the law a distinct estate from the lords temporal, and are so distinguished in most of our acts of parliament, yet in practice they are usually blended together under the one name of *the lords*; they intermix in their votes, and the majority of such intermixture joins both estates; and from this want of a separate assembly, and separate negative of the prelates, some writers have argued very cogently, that the lords spiritual and temporal are now in reality only one estate, which is unquestionably true *in every effectual sense*, though the ancient distinction between them still nominally remains; for if a bill should pass their

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* For upon their coming together, the king meets them, either in person or by representation, without which there can be no beginning of a parliament, and he also has the power of dissolving them. 1 *Black. Com.* 153.

house there is no doubt of its validity, though every lord spiritual should vote against it; and on the other hand, it seems according to *Blackstone*, that it would be equally good, if the lords temporal present were inferior to the bishops in number, and every one of those temporal lords gave his vote to reject the bill. 1 *Black. Com.* 156.

The lords *temporal* consist of all the peers of the realm *, such as dukes, marquisses, earls, viscounts, and barons, who sit by reason of their dignities, which they hold by descent or creation: of these the number is indefinite, and may be increased at will by the power of the crown †, and when any parliament is holden, each of them is to have a writ of summons *ex debito justitiæ:* there are also sixteen other peers, who since the union of *Scotland* sit by election, and represent the body of the *Scots* nobility. 4 *Inst.* 1. 1 *Black. Com.* 157. The lords temporal.

The *commons*, which form the third estate of parliament, are chosen by force of the king's writ, which issues *ex debito justi-* The commons.

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* For the bishops are held not to be in strictness, peers of the realm, but merely lords of parliament. *Staund. P. C.* 153. 1 *Black. Com.* 157.

† The distinction of rank and honours is necessary in every well governed state: in order to reward such as are eminent, for their services to the public, in a manner the most desireable to individuals, and yet without burden to the community, exciting thereby an ambitious, yet laudable ardour, and generous emulation, in others: and emulation, or virtuous ambition, is a spring of action, which *however dangerous or invidious in a mere republic, or under a despotic sway*, will certainly be attended with good effects under a free monarchy; where, without destroying its existence, its excesses may be continually restrained by that superior power, from which all honour is derived. 1 *Black. Com.* 157.

Such a spirit, when nationally diffused, gives life and vigour to the community, it sets all the wheels of government in a motion which, under a wise regulator, may be directed to any beneficial purpose, and thereby every individual may be made subservient to the public good, while he principally means to promote his own particular views. 1 *Black. Com.* 158.

A body of nobility is also more peculiarly necessary in our mixed and compounded constitution in order to support the rights of both the crown and the people, by forming a barrier to withstand the encroachments of both. 1 *Black. Com.* 158.

And since titles of nobility are thus expedient in the state, it is also expedient that their owners should form an independant and separate branch of the legislature. If they were confounded with the mass of the people, and like them had only a vote in electing representatives, their privileges would soon be borne down, and overwhelmed by the popular torrent, which would effectually level all distinctions. 1 *Black. Com.* 158.

*It is therefore highly necessary that the body of nobles should have a distinct assembly, distinct deliberations, and distinct powers from the commons.* 1 Black. Com. 158.

*tiæ;* and they are divided into three parts, *viz.* into knights of shires or counties, citizens out of cities, and burgesses out of boroughs. *Co. Lit.* 109. b. 4 *Inst.* 1.

These compose the house of commons, and represent all the commons of *England.* 4 *Inst.* 1.

The number of *English* representatives is five hundred and thirteen, and of *Scots* forty-five, in all five hundred and fifty-eight; and every member, though chosen by one particular district, when elected and returned serves for the whole realm; for the end of his coming thither is not particular, but general; not barely to advantage his constituents, but the common-wealth; and therefore he is not bound to consult with, or take the advice of his constituents upon any particular point, unless he himself thinks it proper or prudent so to do. 1 *Black. Com.* 159.

## *II. The manner and time of its assembling.*

The parliament commences by the king's writ of summons by the advice of his privy council, agreeable to the rule, established before the conquest, that all judicature proceeds from the king.* 4 *Inst.* 4. 1 *Bac. Abr. tit. Court of Par.* (C)

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* It is a branch of the royal prerogative, that no parliament can be convened by its own authority, or by the authority of any except the king alone;† and *Blackstone* saith, this prerogative is founded upon very good reasons; for supposing it had a right to meet spontaneously, without being called together, it is impossible to conceive, that all the members, and each of the houses, would agree unanimously upon the proper time and place of meeting; and if half of the members met, and half absented themselves, who shall determine which is really the legislative body, the party assembled, or that which stays away? It is therefore necessary, saith he, that the parliament should be called together at a determinate time and place, and highly becoming its dignity and independence, that it should be called together by none but one of its own constituent parts: and of the three constituent parts, this office can only appertain to the king, as he is a single person, whose will may be uniform and steady; the first person in the nation, being superior to both houses in dignity, and the only branch of the legislature that has a separate existence, and is capable of perform-

† For in respect to the convention parliament, which met and restored king *Charles* the second, and also in respect of the parliament at the revolution, both of which were self-created; although these arose from the necessity of the thing, which supersedes all law, the throne being vacant, yet it was in both cases deemed expedient, after the re-establishment of the royal power, to pass an act to declare, that these conventions were good, and constituted the two houses of parliament, notwithstanding the want of the king's writs, or other defects of form. See the statutes 13 *Car.* 2. *c.* 7 & *c.* 14, *and* 7 *Will.* & *Mar. st.* 1. *c.* 1.

This writ of summons issues out of chancery, at least forty days before the beginning of a parliament. 4 *Inst.* 4.

And every lord spiritual and temporal of full age, ought to have a distinct writ of summons *ex debito justitiæ*. 4 *Inst.* 1. 4. Writ of summons of peers.

But a first summons of a peer to parliament differs from an ordinary summons, because in the first summons he is called up by his proper christian and surname, not having the name and title of dignity in him till he has sat; but after he has sat, the name of dignity becomes part of his name; but the writ of creation in all other things, is the same with the ordinary writ that calls him. *Co. Lit.* 16.

Also the judges of the realm, and barons of the exchequer of the coif, are summoned as assistants to, and attendants upon the house of lords to advise and assist them when required, but not to have voices. 4 *Inst.* 4. 50. *Simeon's L. Elec.* 31.

So also are the attorney and solicitor general. 4 *Inst.* 4. *Comyns's Dig. tit. Par.* D. (18).

So also the masters in *Chancery* were used to be summoned by writ as assistants to the house of lords, so late as in Lord *Coke's* time: but they now only attend of course, and have a place assigned to them in the house, and are not summoned. 4 *Inst.* 4. *Simeon's L. Elec.* 29.

And indeed the present summons of assistants by writ seems little more than a matter of form, kept alive for the sake of some official perquisite; for though writs of summons still issue to the attorney and solicitor general (on which there are fees of office amounting in all to about a guinea), no return is ever made; and yet like masters they attend the house of lords, and have places assigned to them. *Simeon's L. Elec* 30.

A writ of summons must also be directed to every sheriff of every county in *England* and *Wales*, for the choice and election of knights, citizens, and burgesses, within each of their respective counties. 4 *Inst.* 6. 10. *Co. Lit.* 109. b. Writ of summons of the commons.

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ing any act at a time when no parliament is in being. 1 *Black. Com.* 150.

The manner of issuing the writ is as follows:—When the crown has determined to call a parliament, a warrant or bill issues, signed by the king, and addressed to the lord chancellor, or keeper of the great seal, directing him upon the receipt thereof, to cause such, and so many writs to be made and sealed, under the great seal, as has been used and accustomed. *Simeon's L. El.* 114.

Upon this authority the writs are made out and issued; but it is to be observed, that the issuing of the writ for the election of knights, citizens, and burgesses by the chancellor, is only upon the first summons; for when the parliament is sitting, the authority to issue the warrant for the writ to supply any vacancies is vested in the house of commons, as will be shewn hereafter when we come to consider the laws relative to proceedings at elections.

So a writ of summons must issue out to the lord warden of the *Cinque Ports*, for the election of the barons for the same, who in law are burgesses; except for the election at *Dover*, where it is delivered to the constable of *Dover*. 4 *Inst.* 6. *Simeon's L. El.* 117, 118.

In the counties palatine, the writ issues to the chamberlain, his lieutenant or deputy, who makes his precept to the sheriff; and in that of *Durham*, it issues to the bishop or his chancellor, who in like manner makes his precept to the sheriff. 34 & 35 *Hen.* 8. *c.* 13. 25 *Car.* 2. *c.* 9. *Simeon's L. El.* 117.

These writs are original writs, and therefore cannot be enlarged, restrained, or varied, in any material point, but by act of parliament. 3 *Inst.* 10. *Simeon's L. El.* 21.

Assembling. At the return of the writ, the parliament cannot begin but by the royal presence of the king, either in person or by representation; by representation two ways; either by a guardian of *England*, by letters patent under the great seal when the king is out of the realm; or by commission under the great seal of *England*, to certain lords of parliament, representing the person of the king, he being within the realm, in respect of some infirmity. 4 *Inst.* 6.

But if the king pleases that the parliament shall not begin at the day of the return of the writ of summons, a writ patent under the great seal tested before the day of the return, and directed to the lords spiritual and temporal, and knights, citizens, and burgesses, shall be read at the day of the return in the upper house before the lords, and other commons there assembled, whereby the parliament shall be prorogued to another day; and in such case the parliament does not begin till the day to which it is prorogued. 4 *Inst.* 7.

And every lord spiritual and temporal, and every knight, citizen, and burgess, shall upon summons come to the parliament, except he can reasonably and honestly excuse himself; or he shall be amerced, that is, respectively a lord by the lords, and one of the commons by the commons. 5 *Ric.* 2. *st.* 2. *c.* 4. 4 *Inst.* 43.

Also for departing without licence the lords may fine one of their body; and so of the house of commons. 4 *Inst.* 44.

### *III. Elections.*

In a free state where the territories are small, and its citizens easily known, a part of the legislative power may be exercised by the people in their aggregate or collective capacity; but this will be highly inconvenient, when the public territory is extended to any considerable degree, and the number of citizens increased.* It is therefore very wisely contrived in so

* Mr. Juustice *Blsacktone* does not scruple to attribute the greatest calamities of *Rome*, and even the final loss of its liberty, to the confu-

large a state as ours, that the people should do that by their representatives, which it is impracticable to perform in person. 1 *Black. Com.* 158, 159.

But as it is of the utmost importance to regulate by whom, and in what manner the suffrages are to be given; the laws have very strictly guarded against the usurpation or abuse of this power, by many salutary provisions. 1 *Black. Com.* 170.

These, according to the order observed by *Blackstone* and other writers, may be reduced to these three points.

i. *The qualifications of the electors.*
ii. *The qualifications of the elected.*
iii. *The proceedings at elections.*

i. *The qualifications of the electors.*

Elections in general.

The qualifications of the electors may be considered, FIRST, as they regard electors in general; SECONDLY, as they regard electors of knights of the shire in particular; THIRDLY, as they regard electors of citizens and burgesses in particular.

Peers.

First; *as to the qualifications of electors in general.*] No peer hath a right to vote at elections. *Comyns's Dig. tit. Peers Par.* (D. 10.)

And there is a resolution of the house of commons, that it is a high infringement of the liberties and privileges of the commons of *Great Britain* for any lord of parliament, or any lord

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sion which arose in the public elections, by indulging too large a number of persons in the participation of the privilege of *Roman* citizens. *Simeon's L. El.* 14.

For that learned judge observes that when, after the social war, all the burghers of *Italy* were admitted free citizens of *Rome*, and each had a vote in the public assemblies, it became impossible to distinguish the spurious from the real voter, and from that time all elections and popular deliberations became tumultuous and disorderly, which paved the way for *Marius* and *Sylla*, *Pompey* and *Cæsar*, to trample on the liberties of their country, and at last to dissolve the commonwealth. 1 *Black. Com.* 159.

And the truth of this observation, as to the danger and inconvenience of a too extended right of suffrage, seems to have been acknowledged long ago; for when all freeholders, though of ever so small a value, possessed the right of voting, (as the current of opinion seems to agree that they did) the exercise of that franchise was productive of the greatest tumults and disorders, insomuch that it became at length expedient to pass a law, viz. 8 *Hen.* 6. *c.* 7, in order, as the preamble recites, *to prevent the manslaughters, riots, batteries, and divisions, which did arise by reason of the outrageous and excessive number of electors*, whereby it is enacted, that none should be electors, but such freeholders as could expend 40s. *per annum.*

lieutenant of a county, to concern themselves in the elections of members to serve for the commons in parliament. *Simeon's L. El.* 158.

Women, ideots, and madmen.

Women, ideots, and madmen, are absolutely disqualified from the exercise of this privilege. *Simeon, L. El.* 50.

Infants.

And no persons shall be admitted to vote under the age of twenty-one years. 7 & 8 *Will.* 3. *c.* 25. *s.* 8.

Aliens.

Aliens also can have no vote. *Simeon's L. El.* 50.

Denizens and persons naturalized.

But denizens, from the time of denization, and naturalized persons acquire this right, being then king's subjects, and, after their adoption, supposed as much interested in the choice of representatives, by whom their lives and property are to be bound, as the natives themselves.* *Simeon's L. El.* 50.

Persons convicted of perjury.

No person convicted of wilful and corrupt perjury, or subornation of perjury, shall be capable of voting in any election of a member to serve in parliament.† 2 *Geo.* 2. *c.* 24. *s.* 6.

Persons refusing the oaths.

No person who shall refuse to take the oaths of allegiance and supremacy, or abjuration,‡ or in case he be a quaker, who shall refuse to take the declaration of fidelity, and affirm the effect of the oath of abjuration,§ the same being tendered by the sheriff or returning officer, who is to administer the same at the request of any candidate, shall be capable of voting at any election of any knight, citizen, burgess or baron. 7 & 8 *Will.* 3. *c.* 27. *s.* 19.

Placemen.

And by 22 *Geo.* 3. *c.* 41, no commissioner, collector, supervisor, gauger, or other officer or person whatsoever, concerned or employed in the excise, or any part thereof; nor any commissioner, collector, comptroller, searcher, or other officer or person whatsoever, concerned or employed in the customs, or any part thereof; nor any commissioner, officer, or other person concerned or employed in managing any of the duties on stamps; nor any person appointed by the commissioners for distributing of stamps; nor any commissioner, officer, or other person employed in managing any of the duties on salt; nor any surveyor, collector, comptroller, inspector, officer, or other person employed in collecting, managing, or receiving the duties on windows or houses; nor any postmaster, postmasters general, or their deputies, or any person employed under them in the revenue of the post-office, or any part thereof; nor any captain, master, or mate of any ship, packet, or other vessel, employed by the postmaster general in conveying the mail to and from foreign ports, shall be capable of giving his vote for the

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* But though they may choose, they cannot be chosen representatives of the people. See the qualifications of the elected, infra.

† For being thereby rendered infamous, they are unfit to be trusted with this privilege, although qualified in other respects. *Simeon*, 50.

‡ For the form of these oaths, see title Oaths.

§ For the form of the declaration of fidelity and effect of the oath of abjuration, see title Quakers.

election of any knight of the shire, commissioner, citizen, burgess, or baron, to serve in parliament; and if any person, hereby made incapable of voting, shall nevertheless presume to give his vote, during the time he shall hold, or within twelve months after he shall cease to hold or execute any of the offices aforesaid, contrary to this act, such votes shall be void; and every person so offending shall forfeit 100*l.* one moiety to the informer, and the other to be immediately paid into the hands of the treasurer of the county, to be disposed of to such purposes as the next general quarter session shall think fit; to be recovered by any person that shall sue in any court of record at *Westminster*. *s.* 1.

But nothing in this act shall extend to any commissioner of the land tax, or officer acting under the appointment of such commissioners, for the purpose of assessing, collecting, or managing the land tax; nor to any office held by letters patent for any estate of inheritance or freehold. *s.* 2, 3.

And no person shall be liable to any forfeiture, unless prosecution be commenced within twelve months. *s.* 5.

And no collector, supervisor, gauger, or other person employed in the collecting or managing the duties of EXCISE; nor any commissioner, or collector, or other persons employed in collecting or managing the CUSTOMS; nor the postmaster-general or his deputies, or any person employed under him in the revenue of the POST-OFFICE, shall, by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving his vote, for the choice of any knight, citizen, burgess, or baron to serve in parliament, and every person offending therein shall forfeit 100*l.* one moiety to the informer, the other moiety to the poor of the parish, to be recovered by any person that shall sue for the same in any court at *Westminster*; and every person convicted on any such suit, shall become disabled of bearing any office relating to the said duties or any other place under the king. 5 & 6 *Will. & Mar.* c. 20. *s.* 48. 12 & 13 *Will.* 3. c. 10. *s.* 91. 9 *Ann.* c. 10. *s.* 44.

Electors of knights of the shire.

Secondly; *as to the qualifications of electors of knights of the shire in particular.*] The first statute that requires a qualification of landed property * is 8 *Hen.* 6, *c.* 7, and thereby

* This act appears from the preamble to have been made (as has been before observed) in order to prevent *the manslaughters, riots, batteries, and divisions, that did arise by reason of the outrageous and excessive number of electors.* Mr. justice *Blackstone* also adds another very just reason † for requiring a qualification with regard to property in voters; namely, that such persons may be excluded who are

† See his Commentaries, vol. i. p. 170.

every elector of a knight of the shire shall have land or tenement to the value of 40*s.* by the year at least above reprizes, and the sheriff shall have power to examine upon oath every such chooser how much he may expend by the year.

And by 10 *Hen.* 6. *c.* 2, the said 40*s.* a year shall be freehold.

Also by 18 *Geo.* 2. *c.* 18, no person shall vote in any such election, without having a freehold estate in the county for which he votes, of the yearly value of 40*s.* over and above all rents and charges, payable out of the same*, *s.* 5.

But no public or parliamentary tax, county, church, or parish rate, or any other tax to be assessed upon any county or division, shall be deemed any charge, payable out of any freehold estate, within the meaning of this act. *s.* 6.

Copyholders.

*And as certain persons who held their estate by copy of court roll, pretended, notwithstanding the above acts, that they had a right to vote*, it is expressly enacted by 31 *Geo.* 2. c. 14, that no person who holds his estate by copy of court roll, shall be intitled thereby to vote at the election of any knight of a shire; and if he do, such vote shall be void; and every person so voting shall forfeit to any candidate, for whom such vote shall not have been given, and who shall first sue for the same, 50*l.* to be recovered, with costs, by action, to be brought within nine months in any court of record at *Westminster*, wherein the proof shall lie on the defendant. *s.* 1, 3.

Freeholders in ancient demesne.

But according to *Comyns*, if a man has a freehold in *ancient demesne*, he may elect. *Comyns's Dig. tit. Par.* (D. 10.)

And although it is laid down generally by lord *Coke* that freeholders in *ancient demesne* have no right to vote, yet Mr. *Simeon* says, that the practice for a great many years, seems to have been agreeable to what is laid down by *Comyns*; and he observes, that *Blackstone*, in his accurate and learned treatise upon the right of copyholders to vote, *does not exclude freeholders in ancient demesne* from the exercise of that franchise;

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in so mean a situation that they cannot be esteemed to have a will of their own; for if these persons have votes they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or a wealthy man, a larger share in elections than is consistent with general liberty. All popular states have therefore been obliged to establish certain qualifications, whereby some, who may be reasonably suspected to have no will of their own, are excluded from voting in order to set other individuals, whose wills may be supposed independant, more thoroughly upon a level with each other.

* On pain to forfeit 40l. to the candidate for whom the vote shall not have been given, to be recovered with costs by action of debt in any court at *Westminster*, within nine calendar months, and the proof shall lie on the defendant. 18 *Geo.* 2. *c.* 18. *s.* 3. 13, 14.

and the above act of parliament, which was framed on his doctrine, declares the incapacity in those only *who hold their estates by copy of court roll*; but he very justly adds, that the difficulty of these cases arises from the nice discrimination between customary freeholds, which are *not held by copy of court roll*, and estates which are so held. *See Simeon's L. El.* 82, 83.

Mortgagees and trustees.

No person shall have any vote in electing members for any trust estate, or mortgage, unless such trustee, or mortgagee, be in actual possession or receipt of the rents; but the mortgagor or *cestui que trust* in possession may vote for the estate. 7 & 8 *Will.* 3. *c.* 25. *s.* 7.

Splitting votes.

And all conveyances of any hereditaments, in order to multiply votes, or to split the interest in any houses or lands among several persons to enable them to vote at elections of members, are declared to be void, and no more than one voice shall be admitted for one and the same house or tenement. 7 & 8 *Will.* 3. *c.* 25. *s.* 7.

Fraudulent conveyances.

But the fraudulent erection of freeholds, for the purpose of giving votes, having increased, notwithstanding the last mentioned act, the legislature was again obliged to interpose*, and it was accordingly enacted by 10 *Ann. c.* 23, that all conveyances to qualify persons for voting, shall be against those who executed the same, free and absolute, and discharged of all trusts, conditions, and other defeasances; and all bonds, covenants, or other securities for the defeating, or recovering the same shall be void. *s.* 1.

And every person who shall make such conveyance, or being privy to such purposes, shall prepare the same, and every person, who by colour thereof shall give any vote †, at any election of knights of a shire, shall forfeit 40*l.* to any one who shall sue for the same, to be recovered with costs in any court at *Westminster*, 10 *Ann. c.* 23. *s.* 1.

Possession for twelve months.

And no person shall vote for a knight of the shire, without having been in the actual possession of the estate for which he votes, or in the receipt of the rents and profits thereof for his own use above twelve calendar months, unless the same came to him within the time aforesaid, by descent, marriage, marriage settlement, devise, or promotion to any benefice in a church, or by promotion to any office, on pain, if he vote contrary

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* *Simeon's L. El.* 55.

† Also by 18 *Geo.* 2. *c.* 18. *s.* 5, no person shall vote in right of any freehold estate, which was made to him fraudulently, on purpose to qualify him to give his vote, *on pain to forfeit* 40*l. to the candidate* for whom the vote shall not have been given to be recovered as mentioned in note * in preceding page.

hereto, to forfeit to any candidate, for whom such vote shall not have been given, 40*l.* to be recovered, with costs by action of debt in any court at *Westminster*, within nine calendar months, and the proof shall lie on the defendant. 18 *Geo.* 2. *c.* 18. *s.* 5, 14.

To vote only once.

Also no person shall vote more than once at the same election, under the like penalty, except that in this case the proof is not on the defendant. 18 *Geo.* 2. *c.* 18. *s.* 5. 14.

To be assessed to the land tax.

By 20 *Geo.* 3. *c.* 17, no person shall vote for electing of any knight of the shire to serve in parliament within *England* or *Wales*, (or for any member to serve in parliament for the borough of *Cricklade* in *Wilts.* 22 *Geo.* 3. *c.* 31.) in respect of any messuages, lands, or tenements, which have not for six months next before such election been charged towards a land tax (in case such aid be then granted), "in the name of the "person who shall claim to vote at such election, or in the "name of his tenant actually occupying the same" as tenant of the owner thereof. *s.* 1.

But this act, with respect to such rating and assessing, shall not extend to annuities or fee farm rents (duly registered) issuing out of any premises, rated as aforesaid; nor shall the same extend to any person who became entitled by descent, marriage, marriage settlement, devise, or promotion to any benefice in a church, or by promotion to an office, within twelve months next before such election; but such person shall be entitled to vote, if the premises have been within two years before rated to the land tax, in the name of the person through whom such person shall derive his title; or in the name of some predecessor, within two years before such election, *or in the name of the tenant actually occupying*. *s.* 2.

And the commissioners of the land tax, at their meetings for appointing assessors, shall cause to be delivered to each of the assessors, a printed form of an assessment, as follows: *s.* 3.

## FORM of ASSESSMENT

*County of N— to wit:*
*For the parish of—*
*in the said county.*

An assessment made in pursuance of an act of parliament passed in the—— —— year of his majesty's reign, for granting an aid to his majesty by a land tax, to be raised in *Great Britain*, for the service of the year one thousand seven hundred and ——

| Names of proprietors. | Names of occupiers. | Sums assessed. |
|---|---|---|
| *A. B.* — — | *Himself.* — — | — — — |
| *A. B.* — — | *C. D.* — — | — — — |
| *E. F.* — — | *C. D.* — — | — — |
| *C. D.* — — | *G. H.* — — | — — — |
| *I. K.* and *L. M.* — — | *N. O.* — — | — — — |
| *P. Q.* — — | *R S.* and *T.U.* — — | — — — |

Signed this —— day of —— 17— by us ——

*A. B.*
*C. D.* } Assessors.

And if any person shall occupy any premises belonging to different owners, the same shall be distinctly rated in such assessments, that the proportion of the land tax to be paid by each owner may be ascertained. *s* 3.

And the said assessors are to make their assessments according to the said form; and shall make three duplicates thereof; and shall (fourteen days before such assessment shall be delivered to the commissioners) cause one of the duplicates, or a fair copy thereof, to be stuck up upon one of the doors of the church or chapel of the place for which such assessment shall be made; but in case such assessment shall be made for an extra parochial or other place, where there is no church or chapel, then such assessment shall be stuck up upon one of the doors of the church or chapel next adjoining. *s.* 3.

"But as doubts had arisen whether if the above form was "not strictly pursued, the suffrage of the party claiming to "vote would be admissible;" it is enacted by another statute that nothing in this act of 20 *Geo.* 3 *c.* 17. shall extend to prevent any person from voting for any premises assessed, for six months next before such election, towards a land tax, in the name of the person claiming to vote, or if they have come by descent, marriage, marriage settlement, devise, or promotion to any office, within twelve months before such election, if they have been within two years before assessed to the land tax, in the name of the predecessor of such person claiming to vote, *although the name of the tenant actually occupying such premises, shall not be inserted in such assessment*, according to the above form. See 30 *Geo.* 3. *c.* 35. *s.* 1.

Neither shall the said act prevent any person from voting for any premises, assessed, for six months next before such election,

*in the name of a tenant actually occupying the same, although the name of the person claiming to vote, or the person through whom he derives his title, or his predecessor*, shall not be inserted in the assessment, according to the said form. 30 *Geo.* 3. c. 35. *s.* 2.

And the said duplicates shall be delivered to the land tax commissioners, at their meeting for the receipt of assessments. 20 *Geo.* 3. *c.* 17. *s.* 4.

And if the name of any owner entitled to vote, shall not appear in such assessment, such person may appeal to the commissioners, giving notice thereof in writing to one of the assessors; and the commissioners, on cause shewn, shall amend the duplicates. 20 *Geo.* 3. *c.* 17. *s.* 3.

And any person dissatisfied, by any determination of the commissioners, may appeal to the next general quarter sessions, giving ten days notice to one of the commissioners signing the duplicate, and also to one of the assessors; and such sessions are, upon examination upon oath, to hear and determine such appeal, and to amend such assessments where necessary; and also to award costs; and by warrant to levy the same by distress and sale, rendering the overplus, after deducting the charges. 20 *Geo.* 3. *c.* 17. *s.* 10.

And if the commissioners or sessions upon appeal, find it requisite to insert the names of any person omitted, such person shall be deemed to be rated, as effectually as if the name had been originally inserted. 20 *Geo.* 3. *c.* 17. *s.* 11.

And the commissioners are to cause one of the duplicates so amended (after sealed and signed by them, or three of them) to be returned to the assessors; and such assessors are to deliver such duplicate, so amended, within ten days of the receipt thereof, to one of the chief constables of the hundred, taking his receipt for the same; and such chief constable is to deliver such duplicate upon oath, without any alteration, at the next general quarter sessions, in open court, the first day of such sessions, to the clerk of the peace, to be by him filed amongst the records. 20 *Geo.* 3. *c.* 17. *s.* 3.

And if any assessor shall neglect to deliver such duplicate so amended, to such chief constable, or if such chief constable neglect to deliver the same to such clerk of the peace, or shall wilfully alter or deface such duplicate, he shall forfeit 5*l.* 20 *Geo.* 3. *c.* 17. *s.* 4.

And at the *Michaelmas* sessions in every year, the clerk of the peace or his deputy, shall, before the conclusion of such sessions, examine whether the duplicates of all the assessments for the county shall have been delivered for that year; and if it shall appear that any have not been delivered, then he shall report the same to the court, and the court shall immediately impose the said fine of 5*l.* upon such chief constables;

and the said clerk of the peace shall give to such chief constables immediate notice of such fine; and if the same is not immediately paid, the justices in quarter sessions shall, by order of the court, issue a warrant of distress for the recovery thereof, directed to the constable of the parish where such chief constable shall live; and such warrant shall be delivered by the clerk of the peace, to such constable, who shall levy such fine by distress and sale, rendering the overplus after deducting the charges. 20 *Geo.* 3. *c.* 17. *s.* 5.

But if such chief constable shall voluntarily make oath at such sessions, that such duplicate was not delivered by the assessor; then the said fine shall be put upon such assessor or assessors; and the justices in quarter sessions shall, by order of court, issue a warrant of distress for the recovery thereof, directed to the petty constable, or such other person as they shall think proper; and also shall, by order of court, require the chief constables, or one of them, to give notice to such assessor, that such fines have been set; and such chief constables are to serve such notices upon such assessors within fourteen days after such sessions; and if such assessors shall not deliver such duplicate, or the chief constable's receipt for the same, to the clerk of the peace, or his deputy, within ten days after being served with such notice, then the said clerk of the peace shall deliver such warrant of distress against the assessor or assessors, to the person to whom the same shall be directed, who is to levy the said fine by distress and sale, rendering the overplus after deducting the charges. 20 *Geo.* 3. *c.* 17. *s.* 6.

But if such assessor shall within ten days after such notice, produce to the clerk of the peace, or his deputy, the receipt of such chief constable for such duplicate, then such clerk of the peace shall deliver the warrants against such chief constables, or such of them who shall have signed such receipt, to the proper constable to whom the same shall be directed, that the same may be executed as aforesaid, and the warrant for levying the fine upon such assessors shall not be executed. 20 *Geo.* 3. *c.* 17. *s.* 7.

And the fines imposed upon such chief constables and assessors shall, after recovered, be paid to the treasurer of the county, to be applied as part of the county stock. 20 *Geo.* 3. *c.* 17. *s.* 8.

And whenever any assessment shall not have been made by the assessor and returned to the chief constable, and by the chief constable to the clerk of the peace, by the neglect of any person concerned therein, the justices at quarter sessions, or two justices out of sessions, may order such assessment forthwith to be made in manner aforesaid. 20 *Geo.* 3. *c.* 17. *s.* 9.

And it shall be lawful for all persons to inspect the duplicates in the hands of such clerk of the peace, or his deputy,

paying for every search 1*s.*; and the clerk of the peace is, upon demand, to deliver a true copy of all such duplicates, or of such part of which a copy shall be demanded, to any person who shall demand the same, signed by him or his deputy, for which copy he shall be paid at the rate of sixpence for every three hundred words or figures; which said duplicates, and also a true copy of them signed as aforesaid, and also the duplicate of any assessment in the possession of the commissioners of land tax, or the receiver-general, or a copy of the said duplicates signed by such commissioners, and purporting the same to be a true copy, shall be admitted as legal evidence. 20 *Geo.* 3. *c.* 17. *s.* 13.

And such clerk of the peace, or his deputy, shall, upon reasonable notice, attend at every election of a knight of the shire, with the original duplicates, at the request of any candidate; such candidate paying him a satisfaction for such attendance, at the rate of two guineas per day, together with an allowance of 1*s.* 6*d.* a mile for his journey, from his place of abode, to and from the place of election. 20 *Geo.* 3. *c.* 17. *s.* 14.

And after issuing any writ or precept for such election, the clerk of the peace, or his deputy, shall attend *gratis*, from day to day, from nine in the forenoon to three in the afternoon in each day, at the place where the records of the county are kept, from the time of the delivery of such notice, to the day immediately preceding the day of election, for the purpose of receiving applications for the inspection of such duplicates, and for making copies of them. 20 *Geo.* 3. *c.* 17. *s.* 15.

And if any clerk of the peace or his deputy, shall neglect or refuse to permit such duplicates to be inspected, or to deliver any copy thereof, or attend where the records are kept, or at any county election, with such duplicates, he shall forfeit 500*l.* to the party aggrieved, provided such action is brought within two months; and if no action is brought within the said time, then to any person who shall sue for the same within twelve months. 20 *Geo.* 3. *c.* 17. *s.* 16.

The said penalty to be recovered with full costs, in any court at *Westminster*. 20 *Geo.* 3. *c.* 17. *s.* 18.

And he shall also forfeit his office, the same to be absolutely void upon being convicted; and he shall be rendered incapable of being again appointed a clerk of the peace, or deputy, or of acting as such in any county, riding or division whatsoever. 20 *Geo.* 3. *c.* 17. *s.* 16.

And final judgment upon any verdict obtained against such clerk, or deputy, for the recovery of such forfeiture, shall be deemed a sufficient conviction, without any other prosecution whatsoever; and immediately after such judgment, the said office shall be absolutely void. 20 *Geo.* 3. *c.* 17. *s.* 17.

Husband voting in right of dower.

*As some nice questions had been raised upon the husband's right of voting in right of his wife's dower before actual as-*

*signment, which in little freeholds is scarce ever done**; it is also enacted by the said 20 *Geo.* 3. *c.* 17, that where any woman, the widow of any person tenant in fee or in tail, shall be entitled to dower, out of the freehold estate of which her husband died seized, and shall intermarry with a second husband, such second husband shall be entitled to vote in respect of such dower, if such dower shall be of the clear yearly value of 40*s.* although the same has not been set out by metes or bounds, if such husband shall be in the actual receipt of the profits of such dower, and the estate from whence the same issues is rated to the land tax in the name of the actual owner. *s.* 12.

The stat. 7 & 8 *Will.* 3. *c.* 25. *s.* 7, to prevent the splitting of freeholds (*see* p. 567 *supra*), extends to freeholders in cities and towns, counties of themselves. *Simeon's L. El.* 64. Freeholders in cities and towns, counties of themselves.

And by 13 *Geo.* 2. *c.* 20, the provisions and penalties of the stat. 10 *Ann. c.* 23, against fraudulent conveyances (*see* p. 567 *supra*) are expressly extended to freeholders, and freeholds in cities and towns, counties of themselves.

Also by 19 *Geo.* 2. *c.* 28, no person shall vote for a member to serve for a city or town, which is a county of itself, in right of any freehold messuages, lands or tenements, of the yearly value of 40*s.* which have not been charged or assessed to the land tax twelve calendar months † before such election, with an exception of persons voting in right of any rents, messuages, or seats belonging to any offices which have not been usually assessed to the land tax: and it is further provided, that the acting commissioners of the land tax for the time being, or any three or more of them, at their meetings, shall sign and seal one other duplicate of the copies of the assessment or assessments, to be delivered by them to the assessors after all appeals determined; and shall deliver, or cause the same to be delivered to the persons officiating as clerks of the peace within the districts of the said cities and towns, being counties of themselves, to be by them kept among the records of the sessions; to which all persons may resort and inspect the same, paying sixpence, and the said persons officiating as clerks of the peace, or their deputies, shall give copies of the said duplicates or any part thereof to any person who shall require the same, paying after the rate of sixpence for every three hundred words. *s.* 3.

By 3 *Geo.* 3. *c.* 24, no person shall vote for any knight of a shire, citizen, or burgess for *England*, in respect of any annuity or rent charge issuing out of freehold lands or tenements, unless a *certificate* upon oath be entered with the clerk of the peace or town clerk, twelve months before the first day of the election. *s.* 1. Voting in right of annuities and rent charges.

* *Simeon's L. El.*

† In counties six only, by 20 *Geo.* 3. *c.* 17.

And no person shall vote in respect of such annuity or rent charge which shall come by descent, marriage, marriage-settlement, devise, or presentation to a benefice in church, or promotion to an office within twelve calendar months next before such election, unless a certificate upon oath, or affirmation if a quaker, shall have been entered with the clerk of the peace, town clerk or other officer as aforesaid, before the first day of such election. *s.* 2.

And the form of such certificate is directed to be as follows. *s.* 1, 2.

*I A B of ——— am really and* bona fide *seized of an annuity or rent charge, for my own use and benefit, of the clear yearly value of forty shillings, above all rents and charges payable out of the same, wholly issuing out of freehold lands, tenements or hereditaments, belonging to* C D *of ——— situate, lying, and being in the parish, township, or place, or in the parishes townships, or places of* E, *in the county of ———, without any trust, agreement, matter, or thing to the contrary notwithstanding; and I, or the person or persons under whom I claim, was or were seized of the said annuity or rent charge, before the first day of* June, *one thousand seven hundred and sixty-three* [or in the case of the same coming by descent, marriage, or the like say, *And I became seized of the said annuity or rent charge on the ——— day of ——— last past by descent*, (or otherwise as the case may happen)].

And no person shall vote in respect of any such annuity or rent charge to be granted after the said first day of *June*, 1763, unless a memorial of the grant shall have been registered with the clerk of the peace, town clerk, or other public officer, having the custody of the records, where the premises out of which such annuity or rent charge issues, shall be, twelve calendar months at least before the first day of such election:

Which memorial shall be wrote on parchment, and directed to such clerk of the peace, town-clerk, or other public officer, and shall be under the hand and seal of the grantor, and attested by two witnesses, one whereof to be one of the witnesses to the execution; which witness shall upon oath before such clerk prove the sealing and delivering of such grant, and the signing and sealing of such memorial:

Which memorial shall contain the day and year of the date, and the names, additions, and abodes of the parties and witnesses, and all the premises out of which the annuity or rent charge issues, and the place where they lie:

And such grant shall, at the time of entering such memorial, be produced to such clerk, who shall thereon indorse a certificate, in which shall be mentioned the day and year on which such memorial shall be so entered. *s.* 3.

And no person shall vote by reason of any assignment, of such annuity or rent charge, without like certificate, entry, and memorial of such grant and assignment as in case of an original grant. *s.* 4.

And the clerk of the peace or other officer, shall keep a book for entering such certificate and memorial, and shall be allowed for the entry of every certificate 1*s.*; and of every memorial 2*s.*; and for every search 1*s.* and every person may inspect the certificates, memorials, and entries; and the clerk of the peace or other officer is to give copies thereof to any persons requiring the same, and paying for such copy if it contains no more than two hundred words 6*d.* and so in proportion. *s.* 5.

And such clerks of the peace or officers may administer an oath when required, and true copies of the certificate and memorials attested by the clerk of the peace or other officer, shall be legal evidence. *s.* 5.

But a memorial of such grant or assignment as shall be executed in any place not within forty miles of the office of the clerk of the peace or other officer aforesaid, shall be registered by him, in case an affidavit sworn, or affirmation made before one of the judges of *Westminster-hall*, or a master in *Chancery*, ordinary or extraordinary, be brought with such memorial, wherein one of the witnesses to the grant shall swear that he saw the same executed. *s.* 6.

And the clerk of the peace, or other officer aforesaid, shall, upon notice, attend at any election with the book of such entries as aforesaid, at the request of any candidate, he making satisfaction for such attendance. *s.* 7.

And any clerk of the peace or officer aforesaid guilty of any wilful neglect, misdemeanor or fraudulent practice, contrary to this act, shall forfeit 100*l.* to the person who shall sue for the same within twelve months in any court of record at *Westminster*. *s.* 8, 9.

In the construction of the above act, it has been determined by a committee of the house of commons, that a person who was entitled to a salary of 20*l.* a year issuing out of the great tithes of the parish, had a right to vote, although he had not registered it as an annuity; and the same committee held unanimously, that neither reserved nor fee farm rents need be registered, as not being within the meaning of the act. *Simeon's L. El.* 67.

Thirdly; *as to the qualifications of electors of citizens and burgesses in particular.*] The right and qualification of voters in cities, towns, and boroughs, is various, depending intirely on the several charters, customs, and constitutions of the respec- Electors of citizens and burgesses.

tive places, as have prevailed in them time immemorial.* 1 *Black. Com.* 174.

These general rights may be ranked under three divisions: 1st. the right by tenure, which includes the burgage tenures; 2dly. right by charter, which includes all cases where the right of voting is in a body corporate; and 3dly, right popular, which last class comprehends all the other rights of voting. *Simeon's L. El.* 94.

1. It is part of the constitution of England, that burgage tenure boroughs shall elect members to serve in parliament: and such right of election is a privilege annexed to the burgage land, and is a real privilege. 6 *Mod Rep.* 51, 52. 2 *Lord Raym.* 951.

And this real privilege cannot be lost though the tenements are destroyed, so long as the evidence of the right remains†. *Simeon's L. El.* 94, 95.

2. The corporate right of election is prescribed by charters, which are mostly existing. *Simeon's L. El.* 97.

3. Under the third class of rights popular, are included every species of right not falling within the other two. The most general and largest right of this kind is that which is comprehended under the words *commonalty*, *populacy*, or *potwallers*, which mean much the same. *Simeon's L. El.* 100.

Respecting these rights infinite disputes have arisen, and it was enacted by 2 *Geo.* 2. *c.* 24, that all votes shall be deemed legal which should be so declared by the last determination in the house of commons, which determination concerning any city, borough, or place, was to be final to all intents and purposes. *s.* 4.

But this clause has been since repealed by the statute 28 *Geo.* 3. *c.* 52. *s.* 31, " so far as it relates to any determination " to be made in the house of commons, subsequent to that act,

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* But great bribery and corruption having been committed within the borough of *Aylesbury*, it is for the prevention thereof in future enacted by 43 Geo. 3. c. 60, that every freeholder above the age of 21 years, who shall have within the three hundreds of *Aylesbury* or one or more of them a freehold of the clear yearly value of 40s. may give his vote at any election of a burgess to serve in parliament, taking the freeholder's oath therein prescribed, and the right of election for the said borough is thereby declared to be in such freeholder and the persons who by the custom and usage of the borough have a right to vote at such election.

† In one case a burgage was defined to be " an entire indivisible te- " nement holden of the superior lord of a borough by an immemorial " certain rent distinctly reserved, to which the right of voting is inci- " dent;" and in another case the definition given was, " one undivided " and indivisible tenement clearly described, neither created nor capa- " ble of being created within time of memory, which has immemorially " given a right of voting." *Luder's* 178. 1 *Doug.* 205. *Simeon's L. El.* 95.

and the power of finally concluding the right by determination is now transferred to and vested in the select committees of the house of commons, for it is by that act enacted, that the report of the select committee respecting the right of election, or respecting the right of appointing the returning officer, shall be entered in the journals of the house, and notice thereof sent by the speaker to the sheriff or returning officer; a true copy of which notice shall by such officer be affixed to the doors of the county hall or town hall, or of the parish church nearest to the place where such election has usually been held; and such notice shall also be inserted, by order of the speaker, in the next *London* Gazette. 28 Geo. 3. *c.* 52. *s.* 25.

But any person may within twelve months after the day on which such report shall be made to the house, or within fourteen days after the commencement of the next session, petition the house to be admitted to oppose that right which shall have been deemed valid in the judgment of such committee. *s.* 26.

And if no such petition shall be presented within the time above limited, the judgment of such committee shall be conclusive in all subsequent elections for that place, to which the same shall relate. *s.* 27.

Persons receiving alms.

*Alms* received within a year before the election is held a disqualification at common law. *Simeon's L. El.* 88.

For this dependent situation, and want of the common necessaries of life, renders it probable that the party voting will not exercise a free choice. *Simeon's L. El.* 88.

But this, though laid down as a general position, must be confined to elections for citizens and burgesses only; as freeholders qualified within the statutes, at the time of election, claim their privilege by statute law, which has made no exception. *Simeon's L. El.* 88, 89.

So persons claiming a right to vote by a burgage tenure in their possession at the election, are not, as it should seem, disqualified by the receipt of alms within the year, unless alms-men are excepted by usage, or the last determination. *Simeon's L. El.* 89.

And the word *alms*, in this case, seems to be understood to be *parish relief. See Simeon's L. El.* 91.

For where there is a charitable foundation, in which the members have a permanent interest, as in the case of *Chelsea* and *Greenwich* pensioners, and the like; this does not disable them from voting, for it is their estate. *See Simeon's L. El.* 91.

Certificate men.

Also, where the right of election is large enough to comprehend certificate persons, and there is no special usage to the contrary, such persons have a right to vote; for though they

are not parishioners, they are not paupers, and may be very substantial persons. *Simeon's L. El.* 93.

Occasional or honorary freeman.

By 3 *Geo.* 3. *c.* 15, (which is to be read at the time of election by the returning officer, openly, where the right of election is in the whole or in part, in freemen, immediately after the reading of the act for preventing bribery), no person claiming to vote as a freeman, at any election for any city, town, port or borough, where such voter's right is as a freeman only, shall be admitted to vote, unless he shall have been admitted to the freedom twelve months before the first day of election : and if he vote contrary hereto, he shall forfeit 100*l.* to him who shall inform, to be recovered, with costs, in any court at *Westminster*, within one year ; and the vote given shall be void. *s.* 1. 5, 6, 7.

But nothing herein shall extend to any person entitled to freedom by birth, marriage, or servitude, nor to the cities of *London* or *Norwich*. *s.* 2. 8.

And if any mayor, or other officer of any corporation, or other person whatsoever, shall wilfully antedate, or cause to be antedated, any admission, he shall forfeit 500*l.* to him who shall inform, to be recovered as above. *s.* 3.

And the mayor, or any other officer of any corporation, having the custody of the records, shall, upon the demand of any candidate, or his agent, or two freemen, on the payment of one shilling, permit them between nine in the morning and three in afternoon, at any time before, and within one month after the election, to inspect the books and papers wherein admissions are entered, and have copies thereof, paying a reasonable charge for writing the same ; and such books and papers shall, if demanded by such candidate, be produced by such officer at the election, and be referred to in case of dispute ; and if such officer shall refuse or neglect to do what is above required, he shall in every case forfeit 100*l.* to him who shall inform, to be recovered as aforesaid. *s.* 4.

Commonalty, populacy, potwallers, or inhabitants.

By 26 *Geo.* 3. *c.* 100, no person shall vote for any city or borough, as *an inhabitant paying scot and lot, or as an inhabitant householder, housekeeper, and potwaller legally settled, or as an inhabitant householder, housekeeper, and potwaller, or as an inhabitant-householder resiant, or as an inhabitant of such* city or borough, unless he shall have been actually an inhabitant paying scot and lot, *&c.* within such city or borough six months previous to the day of election ; and if any person shall vote contrary to this act, his vote shall be void, and he shall forfeit to any person who shall sue, 20*l.* to be recovered by action of debt, at *Westminster* ; and in such action the proof of inhabitancy shall lie upon the person against whom the same shall be brought. *s.* 1.

But nothing in this act shall extend to any person acquiring the possession of any house by descent, marriage, or marriage settlement, or promotion to any office or benefice. *s.* 1.

And it shall relate only to those persons who claim to exercise the franchise of voting as inhabitants paying scot and lot, or as inhabitants, householders, housekeepers and potwallers legally settled, or as inhabitants, householders, housekeepers, and potwallers, or as inhabitants householders resiants, or as inhabitants within such cities or boroughs, and shall not extend to any other persons who claim to vote by any other title. *s.* 2.

### ii. *The qualifications of the elected.*

There are some persons who are disqualified and incapable of being elected to that trust, which is the most important, both in its nature and consequences, that can be conferred by subjects upon a fellow citizen in a free country *—A voice in the legislation to lay down the rules by which the life, liberty, and the property of the subject is regulated and controuled. *Simeon's L. El.* 23. Persons disqualified.

And there are some disqualifications which are *general*, as arising from a principle acknowledged by the common law of the land, and are implied, though they are not expressed in the par-

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* Because the true and ancient institution of parliament does require the lower house, at this time if ever, to be compounded of the gravest, ablest, and worthiest members that may be found; We do hereby (said king *James* the First, in a proclamation for a parliament) out of the care of the common good wherein themselves are participant, without all prejudice to the freedom of elections, admonish all our loving subjects, that have votes in the election of knights and burgesses, of these few points following:

"That they cast their eyes upon the worthiest men of all sorts, "knights, and gentlemen, that are lights and guides in their counties; "experienced parliament men, wise and discreet statesmen, that have "been practised in public affairs, whether at home or abroad, grave "and eminent lawyers, substantial citizens, and burgesses, and general-"ly such as are interested and have portion in the estate.

Secondly, "That they make choice of such as are well affected in re-"ligion, without declining one hand to blindness and superstition, or "on the other hand to schism or turbulent disposition.

Thirdly, and lastly, "That they be truly sensible not to disvalue or "disparage the house with bankrupts and necessitous persons that may "desire long parliaments only for protection; lawyers of mean account "and estimation; young men that are not ripe for grave consultations, "mean dependants upon great persons, that may be thought to have "their voices under command, and such like obscure and inferior per-"sons:" so that, to conclude, we may have the comfort to see before us the very face of a sufficient and well-composed house, such as may be worthy to be a representative of a third estate of our kingdom, fit to nourish a loving and comfortable meeting between us and our people, and fit to be a noble instrument, under the blessing of Almighty *God*, and our princely care and power, and with the loving conjunction of our prelates and peers, for the settling so great affairs, as the proper objects of parliament. Lord *Bacon's* Works, 4to. vol. 3. 387, 388.

liamentary writ. There are also disqualifications which are *special*; but which having been introduced, or arisen from circumstances subsequent to the formation of the parliamentary writ, have not been literally made exceptions within it. *Simeon's L. El.* 23.

Of the first kind is that disqualification, which is grounded on the supposed want of discretion or imbecility. *Simeon's L. El.* 24.

Infants.

Thus infants and women are ineligible *. 4 *Inst.* 47. *Simeon's L. El.* 24.

Ideots and madmen.

Persons deaf and dumb are said to be ineligible, and ideots and madmen seem to be clearly so, as having no judgment, and therefore incapable of executing the trust †. *Simeon's L. El.* 24.

Aliens.

Aliens also, as being ignorant of the laws and customs of the realm, and unable or unlikely to promote the interest of the state, to which they are not naturally allied, were always ineligible. 4 *Inst.* 47. *Simeon's L. El.* 24.

Denizens.

So though they are made denizens, which gives them in most other respects the rights of subjects from the date of the patent of denization, yet such grant does not make them eligible to parliament. 4 *Inst.* 47. *Simeon's L. El.* 24.

Persons naturalized.

Persons naturalized by act of parliament, though unfit to be trusted, yet by the fiction of naturalization, being made completely, in all respects, citizens of the state from their birth, were formerly capable of being elected. 4 *Inst.* 47. *Simeon's L. El.* 24.

But by 12 & 13 *Will.* 3. *c.* 2, no person born out of the kingdoms of *England*, *Scotland*, or *Ireland*, or the dominions thereunto belonging (although he be naturalized), shall be capable to be a member of either house of parliament. *s.* 3.

And by 1 *Geo.* 1. *st.* 2. *c.* 4, no person shall hereafter be naturalized, unless in the bill there be a clause or particular words inserted, to declare that such person shall not thereby be ena-

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* The former were frequently declared so by the house of commons and the election avoided, the person chosen being under twenty-one years. Party or caprice, however, sometimes adopted a different doctrine, till at length the question was settled by act of parliament. *Simeon's L. El.* 24.

For by 7 & 8 *Will.* 3. *c.* 25, it is expressly enacted, that no person shall be capable of being elected a member, who is not of the age of twenty-one years; and if any such minor shall sit or vote in parliament, he shall incur such penalties as if he had presumed to sit and vote without being chosen or returned. *s.* 8.

† But lunatics in lucid intervals are eligible, for the lunacy may never return; but if it does, and be duly reported to the house, there is a precedent for declaring such lunatic's seat vacant. *Hale on Parl.* 116. *Simeon's L. El.* 34.

bled to be a member of either house of parliament, nor shall any bill be received in either house of parliament, without such clause. *s.* 2.

Persons attainted of treason or felony.

A man attainted for treason or felony cannot be elected. 4 *Inst.* 47.

But outlawry in civil suits does not render the person outlawed ineligible. *Simeon's L. El.* 25, 26.

Peers.

Peers of parliament, who compose a distinct and separate part of the constitution, are, and always were ineligible, and incapable of sitting in the house of commons. *Simeon's L. El.* 26, 27.

Judges and other officers.

The judges of the *King's Bench*, *Common Pleas*, and barons of the *Exchequer* also, being summoned as assistants to, and attendants upon the house of lords to advise and assist them when required, and being also one of the executive parts of the constitution, are ineligible to the house of commons. 4 *Inst.* 47. *Whitel.* 70. *Simeon's L. El.* 27.

But any who have a judicial place in the dutchy court, or other court, ecclesiastical or civil, are eligible. 4 *Inst.* 47.

And the master of the rolls is not considered as a judge, and therefore there is no doubt but that he is perfectly eligible. *Simeon's L. El.* 27.

It seems also certain that, at the present day, the attorney-general, and solicitor general, and also masters in chancery, are eligible. *Simeon's L. El.* 28, 29, 30.

Sheriffs and returning officers.

Sheriffs of counties, and mayors and bailiffs of boroughs are not eligible in their respective jurisdiction, as being returning officers. 1 *Black. Com.* 175.

Neither is a sheriff eligible to a borough, within the county of which he is sheriff at the time of election. *Simeon's L. El.* 43.

But sheriffs of one county are eligible to be knights of another. 1 *Black. Com.* 175.

Also the sheriff of a county is eligible for a town, which is a county of itself, though lying within the district of which he is sheriff. *Simeon's L. El.* 43.

Persons under the degree of peers.

And any other under the degree of a baron may be elected knight, citizen, or burgess. 4 *Inst.* 47.

Such as a knight banneret, or the heir apparent of a peer. 4 *Inst.* 47. *Comyns's Dig. tit. Par.* (D. 9.).

Also, although the eldest sons of *Scots* peers have been by a great number of resolutions formerly declared incapable of sitting in the house of commons, yet they are now deemed eligible, except for places in *Scotland*. *Simeon's L. El.* 31.

Papists.

No papist shall sit in either house of parliament. 30 *Car.* 2. *st.* 2. *c.* 1.

And every person chosen, before he can take his seat as a member of the house, must take the oaths of supremacy, allegi-

ance, and abjuration, and subscribe the declarations against popery. *30 *Car.* 2. *st.* 2. 1 *Geo.* 1. *st.* 2. *c.* 13. *s.* 1, 16, 17 *.

Prisoners and persons abroad.

It does not appear to be clearly settled, whether prisoners in execution for debt, or persons abroad, are ineligible. *Simeon's L. El.* 31.

Ambassadors and officers.

But ambassadors, ministers, officers in the army or navy, or others being abroad at the time of election upon national affairs, are clearly eligible. Upon a contrary doctrine, the most meritorious might be excluded from that trust, which of all others they would be most able to perform, and might best deserve. *Par. Deb.* 1620. vol. i. p. 49, 50. *Simeon's L. El.* 32.

Clergy.

Also persons to be elected members of the house of commons must not be of the clergy, for they are represented in convocation. 4 *Inst.* 47. 1 *Black. Com.* 175.

And it has been recently declared in positive and express terms by a modern statute, THAT no person having been ordained a priest or deacon, or being a minister of the church of *Scotland*, shall be capable of being elected to serve in parliament, as a member of the house of commons. *See* 41 *Geo.* 3. *sess.* 2. *c.* 63. *s.* 1.

And if any such person shall be elected, such election and return shall be void. *s.* 2.

And if any person being elected shall after his election be ordained to the office of priest, or deacon, or become a minister of the church of *Scotland*, then the seat of such person shall immediately become void. *s.* 2.

And if such person shall in any of the aforesaid cases presume to sit or vote he shall forfeit 500*l.* for every day to any person who shall sue for the same, in any of the courts at *Westminster*, within twelve calendar months. *s.* 1, 3.

And every person against whom any such penalty shall be recovered shall be from thenceforth incapable of taking, holding or enjoying any benefice, living or promotion ecclesiastical, or any office of honour or profit under his majesty. *s.* 2.

And proo of the celebration of divine service according to the rites of the church of *England* or of the church of *Scotland*, in any church or chapel consecrated or set apart for public worship, shall be *prima facie* evidence. *s.* 4.

Persons incapacitated by vote of the house of commons.

There is another disqualification for a limited time, as it creates an ineligibility either to a county, city, or borough during the time it lasts, which cannot be beyond the period of one parliament; that is, where a person is declared by a solemn resolution of the house of commons to be incapable of sitting

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* For the oaths see title OATHS, and for the declarations against transubstantiation and popery, see p. 490. 531 supra.

as a member thereof during that parliament. *Simeon's L. El.* 35.

The exercise of this power of removing a member by a vote of the house of commons seems grounded on continued usage, which is called the law of parliament. *Ibid.*

And such a power seems naturally, and even necessarily to belong to all aggregate bodies; they cannot exist honourably, and fulfil the object of their creation without it. The use, however, of this power should be regulated by the strictest justice; for if once the violence of party is let loose upon an object, and a representative of the people is discharged of the trust conferred upon him by his constituents without good cause, the representative body assumes a power of controul over the constituent body, inconsistent with the freedom of election. *Ibid.*

Any crime which renders a man infamous has been made a ground, sometimes of actual and express expulsion;—sometimes, which amounts to the same, clothed only in gentler terms, of being discharged from sitting as a member of that house. *Ibid.*

Thus bribery before, as well as since the *stat.* of king *William**, has been held a sufficient reason for expulsion; so a breach of trust in an office of the state, or corruption in that office, has been resolved a good cause; and a conviction for an obscene and blasphemous libel, followed by a judgment of the *King's Bench*, of fine and imprisonment, and actual execution under it, have been determined sufficient to call forth this mark of censure from the house. *Simeon's L. El.* 36.

But it seems necessary for the house to follow up its resolution of expulsion, by an actual declaration of the party expelled, being incapable of sitting as a member, to make him actually ineligible. *Ibid.*

Members vacating their seats.

Any person already a member of parliament, after he is returned, is ineligible for any other place, unless he vacates his former seat. *Ibid.*

Returned for more than one place.

But persons elected, before they are returned, are eligible, and frequently are elected for other places also, and they cannot make their election till fourteen days after their return. *Simeon's L. El.* 38.

It has been held also, that a petitioner, depending his petition in parliament, may be chosen for another place. *Ibid.*

Placemen.

The acceptance of almost any public office of emolument under government, will also by various acts of parliament since the revolution, render the acceptor ineligible. *Ibid.*

* See stat. 7 *Will.* 3. *c.* 4, *infra.*

Officers of salt duties.

For by 5 *Will. & Mar.* c. 7, no member of the house of commons shall be concerned, or any other in trust for him, in the collecting or managing any of THE DUTIES ON SALT. *s.* 57.

Excise.

And by 11 & 12 *Will.* 3. *c.* 2, no member of the house of commons shall be capable of being a commissioner, or farmer of THE DUTY OF EXCISE, or a commissioner for appeals concerning the said duty, or controling or auditing the account of the said duty, or of holding in his name, or in trust for his use, any office or employment touching the farming, collecting, or managing the said duty. *s.* 150.

Customs.

Also by 12 & 13 *Will.* 3. *c.* 10, no member of the house of commons shall be capable of being a commissioner or farmer of the CUSTOMS, or of holding or enjoying in his own name, or in trust for him, any place or employment touching the farming, collecting, or managing the customs. *s.* 89.

And if any member shall enjoy or execute such place or employment, such person is declared *incapable of sitting or voting* in such parliament. *s.* 90.

Registers.

Also no register or deputy register for the east or north riding of *Yorkshire*, or for *Middlesex*, shall be capable of being chosen a member of parliament. 2 & 3 *Ann.* c. 4. *s.* 22. 6 *Ann.* c. 35. *s.* 32. 7 *Ann.* c. 20. *s.* 21. 8 *Geo.* 2. *c.* 6. *s.* 37.

Placemen and pensioners.

Also by 6 *Ann.* c. 7, no person who shall have in his own name or in trust for him, any new office or place of profit under the crown which since the twenty-fifth of *October*, one thousand seven hundred and five, have been created, or hereafter shall have been created,—nor any person who shall be a commissioner or sub-commissioner of prizes,—secretary or receiver of prizes,—nor any controller of the accompts of the army,—nor any commissioner of the transports,—nor any commissioner of the sick and wounded,—nor any agent for any regiment,—nor any commissioners for wine licences,—nor any governor or deputy governor of the plantations,—nor any commissioner of the navy employed in the out ports,—nor any person having "any pension from the crown "during pleasure, shall be capable of being elected, or of "sitting or voting as a member of the house of commons." *s.* 25.

"And if any person chosen a member of the house of commons, shall accept of any office of profit from the crown, "his election shall be void, and a new writ shall issue for a "new election; but such person shall be capable of being "again elected." *s.* 27.

But nothing herein shall extend to any member of the house of commons, being an officer in the army or navy, who shall receive any new commission in the army or navy.

And if any person hereby disabled to sit or vote in parliament

shall be returned, such election and return are declared to be void: and if any person so disabled shall sit or vote as a member, he shall forfeit five hundred pounds, to be recovered by such as shall sue. *s.* 29.

Also by 1 *Geo.* 1. *c.* 56, no person having *any pension from the crown for any term of years*, either in his own name, or in trust for him, shall be capable of being elected a member of any house of commons. *s.* 1.

And if any person who shall have such pension shall presume to sit or vote he shall forfeit 20*l.* for every day in which he shall sit or vote there, to him who shall sue for the same in any of the courts at *Westminster*, with costs. *s.* 2.

Also by 7 *Geo.* 2. *c.* 16, no judge of the court of session, or justiciary, or baron of the court of *Exchequer* in *Scotland*, shall be capable of being elected a member of the house of commons. *s.* 4.

And by 32 *Geo.* 3. *c.* 53, no justices of the peace appointed under that act to officiate at the seven police offices thereby established in and near the metropolis shall, during their continuance in such appointment, be capable of being elected, or of sitting as members of the house of commons. *s.* 13.

Also by 15 *Geo.* 2. *c.* 22, no person who shall be a commissioner of the revenue in *Ireland*,—or commissioner of the navy or victualling offices,—nor any deputies or clerks in any of the said offices,—or in any of the several offices of the lord high treasurer, or the commissioners of the treasury,—or of the auditor of the receipt of his majesty's *Exchequer*, or of the tellers of the *Exchequer*, or of the chancellor of the *Exchequer*, or of the lord high admiral, or the commissioners of the admiralty,—or of the paymasters of the army—or of the navy, —or of his majesty's principal secretaries of state,—or of the commissioners of the salt,—or of the stamps,—or of appeals, —or of wine licences, —or of hackney coaches,—or of hawkers and pedlars, nor any person having an office, civil or military, within the island of *Minorca*, or in *Gibraltar*, other than officers having commission in any regiment there only, shall be capable of being elected, or of sitting or voting as a member of the house of commons. *s.* 1.

And if any person thereby disabled shall be returned as a member to serve in parliament, such election and return are hereby declared void. And if any person disabled by this act to be elected, shall presume to sit or vote as a member of the house of commons, he shall forfeit 20*l.* with costs, for every day in which he shall sit or vote in the said house, to such persons who shall sue for the same in any court at *Westminster*, and shall from thenceforth be incapable of taking or holding any office of honour or profit under his majesty. *s.* 2.

" But nothing in this act shall exclude the treasurer or comp-
" troller of the navy, the secretaries of the treasury, the secreta-

"ry to the chancellor of the *Exchequer*, or secretaries of the "admiralty, the under secretary to any of the principal secre- "taries of state, or the deputy paymaster of the army, or "any person having any office or employment for life, or "for so long as he shall behave himself well in his office." *s.* 3.

Contractors.

Also by 22 *Geo.* 3. *c.* 45, any person who shall, directly or indirectly, himself, or by any person in trust for him, or for his use, or on his account, undertake, execute, hold, or enjoy, in the whole or in part, any contract, agreement, or commission, made or entered into with the commissioners of the treasury, or of the navy or victualling office, or with the master general or board of ordnance, or with any of such commissioners, or with any other person on account of the public service; or shall knowingly furnish, in pursuance of such agreement, any money to be remitted abroad, or any wares to be used in the service of the public, shall be incapable of being elected, or of sitting or voting as a member of the house of commons, during the time he shall enjoy such contract, or any share thereof, or any benefit arising from the same. *s.* 1.

And if any member shall enter into any such contract as aforesaid, his seat shall be void. *s.* 2.

And if any person hereby disabled to sit or vote shall nevertheless be returned, such election and return are void; and if any person incapable to be elected shall presume to sit or vote, he shall forfeit 500*l.* with costs for every day, to any person who shall sue within twelve months, and also from thenceforth be incapable of holding any contract, or any share thereof, or benefit from the same. *s.* 9. 11.

Also in every contract, &c. there shall be inserted an express condition, that no member of the house of commons be admitted to any share, or to any benefit therefrom; and in case any person who shall enter into the same, shall admit any member to any share thereof, or to receive any benefit thereby, he shall forfeit 500*l.* to be recovered, with costs, by any person who shall sue for the same within twelve months. *s.* 10, 11.

But nothing herein shall extend to any contract, agreement, or commission, by any incorporated trading company, nor to any company now established and consisting of more than ten persons, where it is for the general benefit of such company. *s.* 3.

Exclusions in consequence of the union with *Ireland.*

By 41 *Geo.* 3. *sess.* 2. *c.* 52. [*in pursuance of the stat.* 39 & 40 *Geo.* 3. *c.* 67. *for the union of the kingdoms of* Great Britain *and* Ireland, it is enacted, that from and after 20th *June*, 1801, all persons disabled from or incapable of being elected, or sitting and voting in the house of commons of any parliament of *Great Britain*, shall be disabled from being elected, or sitting and voting in the house of commons of *any parliament of the United Kingdom*, for any county, stewartry, city, borough, cinque port, town, or place in *Great Britain*. *s.* 1.

And all persons disabled from or incapable of being elected, or sitting and voting in the house of commons of any parliament of *Ireland*, shall be disabled from being elected, or sitting and voting in the house of commons of *any parliament of the United Kingdom*, for any county, city, borough, town, or place in *Ireland*. *s.* 2.

But nothing in this act shall enable persons, heretofore disabled by any act of the parliament of *Great Britain*, to sit or vote in the united parliament as knights, citizens, or burgesses for any county, city, borough, town or place in *Ireland;* nor enable persons, heretofore disabled by any acts of the parliament of *Ireland*, to sit or vote in the said united parliament, as knights, citizens, or burgesses, for any county, stewartry, city, borough, cinque port, town, or place in *Great Britain*. *s.* 3.

And no person who shall by himself, or deputy, or any other in trust for him, or for his benefit, take, hold, or execute, any of the offices, herein-after mentioned, in *Ireland*, shall be capable of being elected a member of, or of sitting or voting in any parliament of the United Kingdom; viz.—No commissioners of customs, excise, or stamps, or who shall be concerned, directly or indirectly, in the farming, collecting, or managing, any of the duties, (except the commissioners of the treasury, and their secretary), nor any commissioner for determining appeals concerning the duties of customs, excise, or stamps, or for controlling or auditing the account of the said duties (except the auditor general of the exchequer):—nor any commissioner of imprest accounts:—nor any agent for any regiment:—nor any person who shall, directly or indirectly, himself, or by any person whatsoever in trust for him, or for his use, or on his account, undertake, execute, hold, or enjoy, in the whole, or in part, any *contract*, *agreement*, *or commission*, under the commissioners of the treasury in *Ireland*, or with any other persons whomsoever, on account of the public service in *Ireland;* or who shall furnish, in pursuance of any such agreement, contract, or commission, any money to be remitted abroad, or any wares, or merchandize, to be used in the service of the public (except persons who shall be members of any incorporated trading company, consisting of more than ten persons, as to contracts entered into by such company in its corporate capacity:—nor any deputies or clerks in any of the offices following; that is to say, the office of lord high treasurer, or the commissioners of the treasury (except the secretary of the treasury); or of the auditor of the receipt of the exchequer, or of the tellers of the exchequer (except the secretary of the chancellor); or of the commissioners of stamps, or of the commissioners of appeals.

And no person who shall have in his own name, or in the name of any person in trust for him or his benefit, any office or place of profit, by the nomination, or by any appointment subject to the approbation of the lord lieutenant or chief gover-

nor of *Ireland*, created after the act of the parliament of *Ireland* 33 *Geo*. 3. c. 41. *for securing the freedom and the independence of the house of commons*, shall be capable of being elected, or of sitting or voting in the house of commons of any parliament of the United Kingdom. *s*. 5.

And if any person hereby disabled, shall nevertheless be elected, such election or return are declared to be void; and if any person so elected, and disabled, shall presume to sit or vote, such person shall incur such pains, penalties, and forfeitures, as are inflicted by the several acts of parliament heretofore passed in *Great Britain or Ireland*; and if such person shall be disabled by the having, holding, or accepting of any office, in this act particularized, then such person shall forfeit 500*l*. for every day, to be recovered by such person as shall sue for the same in any court of record in any part of the United Kingdom. *s*. 6.

But nothing in this act shall exclude any person having any office for life, or for so long as he shall behave himself well (except the commissioners of imprest accounts, and persons concerned in the managing, collecting, or farming of any duties). *s*. 8.

And if any person being chosen a member of the house of commons shall accept of any office of profit whatever, immediately from the crown, or by the nomination or by any other appointment, subject to the approbation of the lord lieutenant or chief governor of *Ireland*, his seat shall thereupon become vacant, and a writ issued for a new election; but such person (if he is not incapacitated by any thing herein-before contained), shall be capable of being again elected. *s*. 9.

Also by 43 *Geo*. 3. c. 25, all the officers belonging to the excise, customs, stamps, and post-office in *Ireland*, are rendered incapable of voting in any election of members to serve in parliament for *Ireland*.

Residence.

Formerly it was required that all members should be inhabitants of the places for which they were chosen; but this having been long disregarded, was at length entirely repealed by *stat*. 14 *Geo*. 3. *c*. 58. 1 *Black. Com*. 175.

Landed qualifications.

Knights of the shire were also required to be actual knights, or such notable esquires and gentlemen as had estates sufficient to be knights, and by no means of the degree of yeomen. 1 *Black. Com*. 176.

But no particular rank or quality was necessary for citizens and burgesses. *Simeon's L. El*. 48.

It is, however, now enacted, by 9 *Ann*. *c*. 5, that no person shall be capable to sit or vote as a member of the house of commons for any county, city, borough, or cinque port, who shall not have an estate, freehold or copyhold, for his own life, or some greater estate in law or equity for his own benefit, in lands or hereditaments, over and above what will clear all incumbrances that may affect the same, of the respective annual value

hereafter limited, *viz.* the annual value of 600*l.* for every knight of a shire,—and of 300*l.* for every citizen, burgess or baron of the cinque ports; and if any person who shall be elected or returned, shall not at the time of such election and return be seised of, or entitled to, such estate, such election and return shall be void. *s.* 1.

But nothing in this act shall make the eldest son, or heir apparent of any peer, or of any person qualified to serve as knight of a shire, incapable of being elected. *s.* 2.

Nor shall this act extend to either of the universities. *s.* 3.

And no person shall be qualified within the meaning of this act, by virtue of any mortgage, whereof the equity of redemption is in any other, unless the mortgagee shall have been in possession seven years before his election. *s.* 4.

Also every person (except as aforesaid) who shall appear as a candidate, or be proposed to be elected, shall upon reasonable request (at the time of such election, or before the day prefixed in the writ of summons) by any other candidate, or by any two persons having a right to vote at such election, take an oath to the effect following:

*I A B do swear, that I truly and* bona fide *have such an estate in law or equity, to and for my own use and benefit, of or in lands, tenements, or hereditaments (over and above what will satisfy and clear all incumbrances that may affect the same), of the annual value of* 600*l. above reprizes, as doth qualify me to be elected and returned to serve as a member for the county of ——— according to the tenor and true meaning of the act of parliament in that behalf; and that my said lands, tenements, or hereditaments, are lying or being within the parish, township, or precinct, of ——— or, in the several parishes, townships, or precincts, of ——— in the county of ——— or, in the several counties of ———* (as the case may be).

And in case such candidate is to serve for any city, borough, or cinque port, then the oath shall relate only to the value of 300*l. per annum.* *s.* 5.

And the oaths aforesaid may be administered by the sheriff, or under-sheriff, or by the mayor, bailiff, or other officer, who shall take the poll, or make the return, or by any two justices of the peace; and they who shall administer the oaths, are to certify the taking thereof into the *Chancery* or *Queen's Bench*, within three months, under the penalty of 100*l.*: one moiety to the queen, and the other to such as will sue, to be recovered with costs in any court at *Westminster*; and if any of the candidates shall refuse to take the oath, the election, and return shall be void. *s.* 6.

But no fee shall be taken for administering such oath, or making or filing the certificate, except 1*s.* for administering the oath, and 2*s.* for making the certificate, and 2*s.* for filing the same, under the penalty of 20*l.* to be recovered as aforesaid. *s.* 7.

Also by 33 *Geo.* 2. *c.* 20, every person (except the eldest son or heir apparent of any peer, or of any person qualified to serve as knight of a shire, or the members of either of the universities, *s.* 3.) who shall be elected a member, shall, before he presumes to vote in the house of commons, or sit there during any debate, after the speaker is chosen, deliver in to the clerk of the house, at the table in the middle of the house, and whilst the house is there duly sitting, with their speaker in the chair, an account, signed by such member, containing the names of the parishes, townships, or precincts, and of the counties in which the lands or hereditaments lie, whereby he makes out his qualification, declaring the same to be of the annual value of 600*l.* above reprizes, if a knight of the shire; and of the annual value of 300*l.* above reprizes, if a citizen, burgess, or baron; and shall at the same time take and subscribe the following oath; *viz.*

*I A B do swear, that I truly and* bona fide *have such an estate in law or equity, and of such value, to and for my own use and benefit, of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, as doth qualify me to be elected and returned to serve as a member for the place I am returned for, according to the tenor and true meaning of the acts of parliament in that behalf; and that such lands, tenements, or hereditaments, do lie as described in the paper or account signed by me, and now delivered to the clerk of the house of commons.*

So help me God.

And the house of commons is to administer the said oath and subscription immediately after the party shall have taken the oaths of allegiance, supremacy, and abjuration, at the table. And the said oath and subscription shall be entered in a parchment roll, to be provided by the clerk of the house of commons; and the accounts so signed and delivered to the said clerk shall be filed and kept by him. *s.* 1.

And if any person presume to sit or vote as a member, before he has delivered in such account, and taken such oath, or shall not be qualified according to 9 *Ann. c.* 5, and this act; his election shall be void, and a new writ shall be issued to elect another member. *s.* 2.

Subject to the foregoing restrictions and disqualifications, every subject of the realm is eligible of common right, even against their inclination. 1 *Black. Com.* 177. *Simeon's L. El.* 49.

And after their election, they cannot renounce their return, but must serve in the trust conferred upon them, it being a

trust not for their own, but for the public benefit. *Simeon's L. El.* 49.

And for the same reason it is, that the king cannot grant to a subject an exemption from serving as representative of the people. *Simeon's L. El.* 49.

iii. *The proceedings at elections.*

Writ on a general election.

It has been before shewn *, that *upon the summons of a new parliament* a warrant issues signed by the king, and addressed to the lord chancellor or keeper of the great seal, directing him upon the receipt thereof, to cause such and so many writs to be made and sealed, under the great seal, as has been used and accustomed. *Simeon's L. El.* 114.

And when any new parliament shall be summoned, there shall be forty days between the *teste* and return of the writ. 7 & 8 *Wil.* 3. *c.* 25. *s.* 1.

On a vacancy, afterwards.

But the issuing of the writ by the chancellor is only *upon the first summons of the parliament;* for if a vacancy happens *after the first day of sitting*, the house, whether it be actually sitting or not, at the time of such vacancy, has the sole power of ordering such writ to issue. 2 *Grey's Deb.* 6. *Simeon's L. El.* 115.

And in order the better to supply any vacancies that may happen *during a prorogation or an adjournment*, and that the full number of members may be present at its meeting, it is enacted by 24 *Geo.* 3. *c.* 26, that the speaker may issue his warrant to the clerk of the crown to make out a new writ for electing a member of the house of commons, *in the room of any member who shall die or become a peer*, either during the recess, or previous thereto, as soon as he shall receive notice by a certificate (I) thereof, under the hands of two members; but he is to

* In p. 560, 561 supra.

(I) The form of which notice is as follows:

*WE whose names are underwritten, being two members of the house of commons, do hereby certify, that* M P, *late a member of the said house, serving as one of the knights of the shire for the county of* ——— [or as the case may be] *died upon the* ——— *day of* ——— [*or is become a peer of* Great Britain, *and that a writ of summons hath been issued, under the great seal of* Great Britain, *to summon him to parliament*], [as the case may be]; *and we give you this notice, to the intent that you may issue your warrant to the clerk of the crown, to make out a new writ for the election of a knight to serve in par-*

cause notice of receiving of such certificate, to be inserted in the *London* Gazette, the publisher whereof is to give a receipt for the same, and the speaker is not to issue his warrant until fourteen days after such insertion. *s.* 2, 3. 9.

Also nothing herein shall enable the speaker to issue such warrant, unless the return of the writ by which the member deceased or become a peer was elected, shall have been brought into the office of the clerk of the crown fifteen days before the end of the last sitting of the house; nor unless the application be made so long before their next meeting, that the writ for election may be issued before the day of such next meeting, nor in case such application be made with respect to any seat vacated by any member against whose election and return a petition was depending, at the time of prorogation or adjournment. *s.* 4.

And to prevent the inconveniences that may arise from the death of the speaker, or by his seat becoming vacant, or by his absence out of the realm, the speaker is to authorize not more than seven, nor less than three members of the house of commons to execute the powers given to him by this act; and when such number shall be reduced to less than three, a new appointment shall be made; but such persons are only to act, in the case of there being no speaker, or one that is out of the realm, and only while they are members of the house; and the said appointment is to be entered in the journals of the house, and published in the Gazette. *s.* 5, 6, 7, 8.

Carriage of the writ.

As the messenger of the great seal is responsible for the due delivery of the writ, any one may have *the carriage* of it to whom he chuses to entrust it. * *Simeon's L. El.* 117.

Delivery to the sheriff.

But as to *the due delivery* thereof, it is expressly enacted by 7 & 8 *Will.* 3. c. 25, that as well upon the calling of any new parliament, as upon a vacancy in parliament time, the writ *shall be delivered* to the proper officer to whom

* For where it was moved to be a contempt to have trusted the carriage of the writ to a candidate, it was resolved in the negative. *Simeon's L. El.* 117. *Com. Jour.* 18 *Jan.* 1721.

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*liament for the said county of* —— [or as the case may be] *in the room in the said* M. P. *Given under our hands this* —— *day of* ——

To the speaker of
the house of commons.

Note, *That in case there shall be no speaker of the house of commons, in his absence out of the realm, such certificate may be addressed to any of the persons appointed according to the directions of this act.*

the execution thereof doth belong, and to no other person *. s. 4.

Sheriff issuing precept for the election of members for boroughs and towns.

And every such officer upon receipt of the writ shall endorse thereon the day that he received the same, and forthwith make out the precept to each borough, town corporate, or place within his jurisdiction; and within three days (or if it be for the *Cinque Ports* within six days, 10 & 11 *Will.* 3. *c.* 7. *s.* 2.) after receipt of the writ deliver such precepts (II) to the proper officer of every such borough, town corporate, or place, and to no other person; and such officer upon the back of the precept shall indorse the day of the receipt thereof, in the presence of the party

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* Therefore where the writ has been *delivered* to the candidate himself, the party delivering it was committed by the house. 19 *Journ.* 709. *Simeon's L. El.* 117.

So where the precept was delivered to two burgesses, who were not constables of the borough, the party delivering it was committed. 19 *Journ.* 726. *Simeon's L. El.* 117.

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(II) Precept from the sheriff of *M.* to the bailiff of *W.* for the election of one citizen for the said city.

Middlesex, { *Sir* C A, *knight, and sir* R G, *knight, sheriff of the said county, to the bailiff of the liberty of the dean and chapter of the collegiate church of* St. Peter, *at* W *in the said county, greeting. Know that I have received a certain writ of our lord the king to me directed, the tenor whereof followeth* [here follows the writ verbatim] *and because the execution of the said writ belongs to you, therefore by virtue of the said writ, I require you, that you forthwith cause a citizen to be elected for the said city in the place of the said sir* P W, *according to the command of the said writ; and how this my warrant shall be executed you shall make known to me immediately after the said election made, so that I may certify the same, together with the said writ, and this precept return to our lord the king in his chancery forthwith. Hereof fail not: This is your warrant.* Given under the seal of my office, dated the —— day of ——— one thousand seven hundred and ——

*C. A.*
and } Sheriff.
*R. G.*

The execution of this precept appears in a certain schedule hereunto annexed.

*J. C.* esq. bailiff.

from whom he received such precept, and shall forthwith cause public notice to be given of the time and place of election, and shall proceed to election thereupon within eight days after his receipt of the precept, and give four days notice at least of the day appointed for the election *. 7 & 8 *Wil.* 3. *c.* 25. *s.* 1.

In cities and towns counties of themselves.

And in a city or town being a county of itself, the sheriff, or under sheriff, or such person as he shall depute, shall forthwith on receipt of the writ, give public notice of the time and place of election, and proceed to election thereupon within eight days next after the receipt of the writ, and give three days notice thereof at least, exclusive of the day of receipt of the writ and of the day of election. 19 *Geo.* 2. *c.* 28. *s.* 7.

And he shall allow a cheque-book for every poll-book for each candidate, to be kept by their inspectors at the place of taking the poll. *s.* 6.

Election of knights of the shire.

Upon every election of any knight of the shire, the sheriff shall, within two days after the receipt of the writ, cause proclamation to be made, at the place where the ensuing election ought by law to be holden, of a special county court to be there holden *for the purpose of such election only*, on any day, Sunday excepted, not later from the day of making such proclamation than the sixteenth day, nor sooner than the tenth day, and shall proceed in such election at such special county court in the same manner as if the said election was to be held at a county court, or an adjournment thereof, according to the laws then in being.† 25 *Geo.* 3. *c.* 84. *s.* 4.

Provided, that the usual county court for all other purposes, or any adjournment thereof, may be held and proceeded in by the sheriff, in the same manner, and at the same times and places as if the writ for the election of a knight of the shire had not been received. *Ibid.*

Within what hours notice of elections to be given.

And all notices to be given of the time and place of any election for members to serve in parliament, shall be publicly given at the usual place or places within the hours of eight o'clock in the forenoon and four o'clock in the afternoon, from 25th *October* to 25th *March* inclusive, and within the hours of eight o'clock in the afternoon, from 25th *March* to 25th *October* inclusive, and not otherwise: and no notice shall be valid for any purposes whatsoever, which shall not be published in manner aforesaid. 33 *Geo.* 3. *c.* 64.

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* In the boroughs of *New Shoreham* in *Sussex*, and *Cricklade* in *Wilts*, the election must be within twelve days, and not less than eight days. See 11 *Geo.* 3. *c.* 55. *s.* 5. & 22 *Geo.* 3. *c.* 31.

† But to give the freeholders time to assemble on the day of election without breaking in upon the *Sunday*, it is directed that all county courts for the county of *York*, or any other county courts which used to be holden on *Monday* shall be held on a *Wednesday*, and on no other day. 7 & 8 *Will.* 3. *c.* 25. *s.* 9.

And upon every election of any knight of the shire, the sheriff shall hold his county court for the election at the most public and usual place of election, and where the same has most usually been for forty years. 7 & 8 *Will.* 3. *c.* 25. *s.* 3. Place of election.

And the sheriff shall not adjourn such county court to any other place without the consent of the candidates. *s.* 5.

But it shall be lawful for the sheriff of the county of *Southampton*, after any poll for the said county shall have closed at *Winchester*, and which shall always be closed within fifteen days at most, to adjourn the poll to *Newport* in the *Isle* of *Wight*, in case the same shall be required by one of the candidates, so that such adjourned poll shall commence within four days from the close of the poll at *Winchester* and shall not continue longer than three days. 25 *Geo.* 3. *c.* 84. *s.* 16.

The writ having been delivered to the sheriff as before directed, and notice of the time and place of election given in manner aforesaid, the sheriff must by stat. 23 *Hen.* 6. *c.* 14. *s.* 2, under the penalty of 100*l.* to the king, and 100*l.* to him who will sue against him, his executors or administrators, with costs, proceed to the election of every knight of the shire betwixt the hours of eight and eleven in the forenoon, and in case the election be not determined on a view, the sheriff, if required, must take the poll*. When and how the poll is to be taken in counties.

And where a poll is demanded, the same shall commence on the day on which such demand is made, or upon the next day at farthest (unless it be *Sunday*, and then on the day after), and shall be duly and regularly proceeded in from day to day (*Sundays* excepted) until the same be finished; but so as not to continue more than fifteen days at most (*Sundays* excepted), and if the same shall continue for fifteen days, then to be finally closed before the hour of three in the afternoon. 25 *Geo.* 3. *c.* 84. *s.* 1.

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* The words *poll* and *election* have been sometimes inaccurately used to mean the same thing; but an election is *a choice by the major part of those who have a right to choose*, and who exercise that right. If the electors are unanimous, or but a few dissent, it is easy to determine the election upon view: so if there be no competitor to dispute the choice, nor any proposed, there can be no doubt who is the person elected, though some, or even the larger part of the electors, do not give their voices. *Simeon's L. El.* 128, 129.

But the instant a party interested in the competition, disputes that choice as appearing upon the view, however clear the majority of the view is in favour of the rival candidate, such person is intitled to try the question by the numeration of voices, the only certain way of finding the truth: taking the voices by numbering the votes man by man, therefore is called THE POLL; and until the larger part of the voters present (that is, at any time during the poll) have concurred in the choice, the election itself is not determined: the *election* therefore is the result of the poll. *Ibid.*

And every returning officer, unless prevented by some unavoidable accident, shall cause the said poll to be kept open for seven hours at least in each day, between eight in the morning and eight at night. *s.* 3.

And for the better taking of the poll, the sheriff or under sheriff, with such others as shall be deputed by him, shall forthwith proceed to take the poll. 7 & 8 *Will.* 3. *c.* 25. *s.* 3.

Clerks for taking poll.

And such sheriff or under sheriff, or such as he shall depute, shall appoint such number of clerks as he shall think fit for taking the poll, in his presence. *Ibid.*

Inspectors.

And he shall also appoint for each candidate, such one person as shall be nominated by each candidate, to be inspectors of every clerk. *Ibid.*

Erecting of booths.

And in order to facilitate the poll, and to prevent confusion, it is enacted by 18 *Geo.* 2. *c.* 18, that the sheriff, or in his absence the under sheriff, or such as he shall depute, shall erect at the expence of the candidates, such number of booths or places for taking the poll, as any of the candidates shall three days before the commencement of the poll desire, so as the same do not exceed the number of hundreds or like divisions, and not exceeding in the whole the number of fifteen ; and shall affix on the most public part of each, the name of the hundred fot which such booth is designed. *s.* 7.

And shall make out a list for each booth of the several towns, parishes, and hamlets, wholly or in part within such hundred; and shall upon request deliver a copy thereof to any of the candidates or their agents, taking for each copy 2*s.* and no more. *Ibid.*

And no person shall be admitted to vote for any freehold estate sworn to be at some parish or place not mentioned in the list so made out for such booth, unless such estate lie in some place not mentioned in any of the lists. *s.* 8.

And the sheriff or under sheriff, or such as he shall depute, shall also appoint a clerk or clerks at each booth to take the poll, who shall at the expence of the candidates be paid, not exceeding one guinea per day each clerk. *s.* 7.

And he shall at every such election allow a cheque book for every poll book for each candidate, to be kept by their respective inspectors, at every place where the poll shall be taken. *s.* 9.

Elections to be free.

As it is essential to the very being of parliament, that elections should be absolutely free, all undue influences upon the electors are illegal, and strongly prohibited. 1 *Black. Com.* 179.

Thus it is commanded by the stat. 3 *Ed.* 1. *c.* 5, upon great forfeiture, that no man *by force of arms*, *nor by malice or menacing*, shall disturb any to make free election.

And by stat. 1 *Will.* & *Mar. sess.* 2. *c.* 2, it is declared that elections of members of parliament ought to be free.

Also by 8 *Geo.* 2. *c.* 30, on notice of an election either in counties or boroughs, the secretary at war shall send orders for the removal of all soldiers quartered in the place, to the distance of two miles, one day at least before the election, and not to return till one day after the poll is ended; but this is not to extend to the guards, nor to any castle or fortified place where a garrison is usually kept; nor to any officer or soldier having right to vote at such election.

Likewise if there be riots, it will be a good ground to avoid the election, and the principal rioters, if duly criminated, will be committed by the house. 1 *Black. Com.* 179. *Simeon's L. El.* 158.

And the lord wardens of the *Cinque Ports* having claimed, as of right, a power of nominating to each of the Cinque ports of the two ancient towns and their members, one person whom they ought to elect as a baron or member of parliament; it was by 2 *Will. & Mar. st.* 1. *c.* 7. *s.* 1, expressly declared that *all such nominations are contrary to law and void.*

It has also been declared by vote of the house of commons, as has been before observed*, that no lord of parliament or lord lieutenant of a county hath any right to interfere in the election of commoners.

And by the several statutes herein before noticed†, if any officer of the excise, customs, stamps, or post office, presume to intermeddle in elections by persuading any voter, or dissuading him, he forfeits 100*l.* and is disabled to hold any office.

Thus, saith sir *William Blackstone*, are the electors of one branch of the legislature secured from any undue influence from either of the other two, and from all external violence and compulsion; but the greatest danger is that in which themselves co-operate by the infamous practice of bribery and corruption, to prevent which the following statutes have been made. 1 *Black. Com.* 179. Bribery.

By 7 *Will.* 3. *c.* 4, no person to be elected to serve in parliament for any place after the *teste* of the writ of summons, or after the ordering of the writs of election upon the calling of any parliament, or after such place becomes vacant in time of parliament, shall before his election give or allow to any person having voice in such election, any money, meat, drink, entertainment or provision, or make any present, gift, reward, or entertainment, or any promise, agreement, obligation, or engagement, to give or allow any money, meat, drink, provision, present, reward or entertainments, to or for any such person in particular, or to such place in general, in order to be elected. *s.* 1.

* See p. 563 supra.
† See p. 564 supra.

And every person so giving, presenting, or allowing, making, promising or engaging, doing, acting, or proceeding, shall be disabled upon such election to serve in parliament for such place. *s.* 2.

And by 2 *Geo.* 2. *c.* 24, which is required to be read by the returning officer immediately after reading the writ; if any person who shall claim a right to vote in any election for members to serve for the commons in parliament, shall receive any money or other reward, or agree for any money, gift, office, or employment, or other reward, to give his vote, or to forbear to give his vote, in any such election; or if any person shall by any gift or reward, or by any promise or security for any gift or reward, corrupt or procure any person to give his vote, or to forbear to give his vote; the offender shall forfeit 500*l.* to be recovered with costs. *s.* 7.

And any person offending in the said cases, after judgment obtained against him in any action, or being otherwise lawfully convicted, shall be for ever disabled to vote in any election of members to serve in parliament: and shall be for ever disabled to hold or enjoy any office or franchise, as a member of any city, borough, or *Cinque port.* *s.* 7.

Bribery however was, and still remains an offence at common law, punishable by indictment or information, and there are several instances where this mode of prosecution has been adopted. 3 *Burrow's Rep.* 1338. *Simeon's L. El.* 160.

And it has been said that the above statutory incapacities attach upon a common law conviction. *Simeon's L. El.* 160.

Taking the poll.

Undue influence being thus guarded against, the election is to be proceeded to, and to this purpose it is enacted by the said stat. 2 *Geo.* 2. *c.* 24, that every sheriff, or other returning officer, shall, immediately after reading the writ or precept for the election, take and subscribe the following oath, *viz.*

Returning officer's oath.

*I A B do solemnly swear, that I have not directly or indirectly received any sum or sums of money, office, place or employment, gratuity or reward, or any bond, bill or note, or any promise or gratuity whatsoever, either by myself, or any other person to my use, or benefit, or advantage, for making any return at the present election of members to serve in parliament; and that I will return such person* (or *persons*) *as shall to the best of my judgment appear to me to have the majority of legal votes.**

Which oath *any justice of peace* of the county, city, corporation or borough, where the election shall be made, or in his absence any three of the electors, are required to administer;

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* For the penalty of bribing returning officers, see 7 & 8 *Will.* 3. c. 7. s. 4. infra.

and the oath shall be entered among the records of the sessions. *s.* 3.

And by 25 *Geo.* 3. *c.* 84, at every election every person whom the returning officer shall retain to act as a clerk in taking the poll, shall, before beginning to take such poll, be sworn by such returning officer *truly and indifferently to take the poll, and to set down the name of each voter, and his addition, and place of abode, and for whom he shall poll; and to poll no person who is not sworn or put to his affirmation,* where by statute required, which oath, of such poll clerk, the returning officer is to administer. *s.* 7.

Persons to be appointed to administer the oaths to electors.

By 42 *Geo.* 3. *c.* 62. when a poll shall be demanded at any election for any county, city, borough, or other place in *England* or *Wales*, or for the town of *Berwick-upon-Tweed*, the returning officer after such poll shall be demanded, shall, at the instance and request in writing of any candidate, under his hand, immediately after such request, and before he shall proceed in taking the poll, appoint two or more persons at different places, and separate from the place where the poll shall be taken, to administer all the oaths*, and take the declarations and affirmations now required to be taken and made by voters, and to certify the names of the electors who shall take such oaths and make such declarations and affirmations in the manner prescribed by 34 *Geo.* 3. *c.* 73. herein after mentioned, and the persons appointed as aforesaid shall have full power to administer such oaths and take such declarations and affirmations. *s.* 1.

But the oath or affirmation required by 2 *Geo. c.* 2. 24†, shall be taken or made by every freeholder, citizen, freeman, burgess or person at the poll, and immediately before he is admitted to poll at such election, in the manner prescribed by the said act, in case the same shall be demanded by either of the candidates or any two of the electors. 43 *Geo.* 3. *c.* 74.

And every person so appointed shall immediately after appointment, and before he shall act, take the following oath: 42 *Geo.* 3. *c.* 62.

*I do swear, that I will faithfully and impartially administer the oaths, and take the declarations and affirmations, now required by law to be taken or made by voters at elections for members to serve in parliament, to and from such persons as shall lawfully apply to me in that behalf, in order to qualify themselves to vote at this election; and that I will on being*

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* Viz. the oaths of allegiance, supremacy, the declaration of fidelity, the oath of abjuration, and the declaration or affirmation of the effect thereof. 34 *Geo.* 3. *c.* 73. *s.* 4.

† Against bribery.

*thereunto requested, fairly and truly give to every such person, or any of them, who shall take such oaths, or make such declarations or affirmations, respectively, or any of them, before me, a certificate thereof; and that I will not give such certificate to any person before he shall have taken such oath, or oaths, or made such declaration or declarations, affirmation or affirmations respectively, as shall be mentioned in such certificate, before me and in my presence.*

Which oath the returning officer, or his deputy, is to administer. *s.* 1.

An additional number to be appointed if necessary.

And if the number of persons so appointed shall be insufficient, the returning officer may, at the like instance of any of the candidates, appoint a further number at any time during the poll. *34 Geo. 3. c. 73. s.* 4.

Proper places to be appointed for taking the oaths.

And the returning officer shall appoint a proper place for every person so appointed, to execute his duty, to which place the electors may have free access, without interrupting the poll, and so as to enable the persons appointed, to act separately, without interfering with each other; and each of the places appointed shall be open, and attended by the person appointed, during all such times as the poll shall be kept open, and continue at least eight hours in every day, between eight in the morning and eight in the evening, until the final close of the poll; and the said oaths and declarations or affirmations shall be administered to as many of the electors, being ready, and desiring to take the same, as can conveniently take the same, together, not exceeding twelve at one time; and the returning officer shall find, provide, and deliver to each person so appointed, a sufficient number of printed forms of the declaration of fidelity required to be made and subscribed by quakers, one of which shall be filled up with the name of, and subscribed by, the person desiring to make and subscribe the declaration of fidelity: and the returning officer shall also find, provide, and deliver to each person so appointed, a sufficient number of printed certificates, agreeable to the form after directed, to be filled up, and delivered to each elector. *s.* 5.

Such places to be provided previous to the election.

And in case any of the candidates shall, three days before any election, give notice in writing to the returning officer to provide such places; then the same shall be provided, so as to be ready before the day of election; and in case there shall not be a sufficient number of fit places at the town or place where the election shall be had, then the returning officer shall cause such booths or temporary erections to be made, as shall be necessary, the expence of which booths, and of the said printed forms, and also the allowance to be made to the persons appointed to administer the said oaths, &c. for their trouble and attendance, not exceeding 1*l.* 1*s.* a-day to every of them, for each day, shall be defrayed and repaid by the candidates, in

equal proportions, to be recovered by the returning officer in any court of record. *s.* 6.

And the electors may apply to the persons appointed as aforesaid before voting, who shall administer the oaths, &c. and give certificates thereof in the following form : Electors to take the oaths and receive a certificate thereof.

*A B* [naming the person taking the oath] *of* [naming the place of such person's abode, and his addition or occupation] *has taken the oath* [or oaths] *of* [naming the said oath or oaths so administered] *before me this* ——— *day of* ———

Or if a quaker ;

*A B* [naming the person subscribing or affirming] *of* [naming the place of such person's abode, and his addition or occupation] *has made and subscribed the declaration of fidelity, and affirmed the effect of the oath of abjuration* [or if only one of those acts has been done, then naming such one act only] *before me this* ——— *day of* ———

And every such voter, to whom such certificate shall be given, shall, on producing the same to the returning officer, or person taking the poll, be permitted to poll. *s.* 2. On production of certificate to vote.

Persons offering to vote without producing such certificate, being required to take the said oaths, shall immediately withdraw, and take the same before one of the persons appointed as aforesaid. *s.* 3. No person to vote without producing certificate.

By 2 *Geo.* 2. *c.* 24, upon every election for any member to serve for the commons in parliament, every freeholder, citizen, freeman, burgess, or person having a right to vote, shall, before he is admitted to poll, take the following oath (or being a quaker make the solemn affirmation), in case the same be demanded by either of the candidates, or any two electors, *viz.* Electors oath

I A B *do swear* (or being a quaker, *do solemnly affirm*) *I have not received or had, by myself, or any person whatsoever in trust for me, for my use and benefit, directly or indirectly, any sum or sums of money, office, place or employment, gift or reward, or any promise or security for any money, office, employment or gift, in order to give my vote at this election ; and that I have not been polled at this election.* against bribery.

Which oath* the officer taking the poll is to administer *gratis*, on

* It might not be amiss if the members elected were bound to take this oath, as well as the oath of abjuration ; which in all probability would be much more effectual than administering it only to the electors. 1 *Black. Com.* 180.

pain to forfeit 50*l.* to the person that shall sue. And no person shall be admitted to poll until he has taken the oath, if demanded, before the returning officer, or others legally deputed by him. *s.* 1.

And if any sheriff, or other returning officer, shall admit any person to be polled without such oaths, if demanded, he shall forfeit 100*l.* with costs; and if any person shall vote without having first taken the oath, if demanded, he shall incur the same penalty. *s.* 2.

Oath of freeholders.

Also by 18 *Geo.* 2. *c.* 18, upon every election of any knight of the shire to serve in parliament, every freeholder, before he is admitted to poll, shall, if required by any of the candidates, or any person having a right to vote, first take the oath (or being a quaker the affirmation) following, *viz.*

*You shall swear* (or being a quaker, *solemnly affirm) that you are a freeholder in the county of* ——— *and have a freehold estate, consisting of* ——— ——— (specifying the nature thereof; and if it consists in messuages, lands or tythes, in whose occupation the same are; and if in rent, the names of the owners or possessors of the tenements out of which such rent is issuing or of some of them), *lying or being at* ——— *in the county of* ——— *of the clear yearly value of forty shillings, over and above all rents and charges payable out of, or in respect of the same; and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above twelve calendar months, or that the same came to you, within the time aforesaid, by descent, marriage, marriage settlement, devise, or promotion to a benefice in a church, or by promotion to an office; and that such freehold estate has not been granted or made to you fraudulently, on purpose to qualify you to give your vote; and that the place of your abode is at* ——— *in* ——— *and that you are twenty-one years of age, as you believe, and that you have not been polled before at this election.*

Which oath (or affirmation) the sheriff, under sheriff, or such sworn clerk as shall be by him appointed for taking the poll, is to administer. And in case any person taking the said oath or affirmation, shall thereby commit wilful perjury, and be convicted; and if any person do corruptly procure or suborn any person to take the said oath or affirmation in order to be polled, whereby he shall commit such wilful perjury, and shall be convicted; they for every such offence shall incur such penalties as are inflicted by 5 *Eliz. c.* 9. & 2 *Geo.* 2. *c.* 25, on persons guilty of perjury.* *s.* 1.

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* For the punishment inflicted by these acts, see title PERJURY.

And the sheriffs and clerks shall enter not only the place of his freehold, but also the place of his abode, as he shall declare the same at the time of giving his vote; and shall enter *jurat* against the name of every such voter who hath taken the oath. 10 *Ann.* c. 23. s. 5.

And the above act of 10 *Geo.* 2. is extended by stat. 19 *Geo.* 2. c. 28, to *cities and towns that are counties of themselves*, where every person has a right to vote in respect of any freehold estate of 40*s*. a year*.

'And although from the various and disputed rights of voting 'in several cities, boroughs and other places, a positive oath of 'qualification cannot be required from the electors, yet as un- 'qualified persons may be deterred from polling at such elec- 'tions under fictitious names or otherwise, by requiring from 'electors previously to their polling the oath or affirmation 'hereinafter mentioned :' IT IS ENACTED by 25 *Geo.* 3. *c.* 84, that upon every election of members of parliament, in all cases where no oath or affirmation of qualification, other than those against bribery, or of allegiance, supremacy and abjuration, can now by law be required, every person claiming to give his vote at such election, shall, if required by any candidate, or any person having a right to vote, before he is admitted to poll, take the oath, or being a quaker affirm as follows:

*I do swear* [or being a quaker, *do affirm*] *that my name is* Oaths of elec-

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* And the form of the oath in such places shall be as follows;

*You shall swear* (or being a *quaker*, you shall solemnly affirm) *that you have a freehold estate, consisting of* (specifying the nature of such freehold estate; and if it consists in messuages, lands or tithes, then specifying in whose occupation the same are; and if rent, then the names of the owners or possessors of the tenements out of which it issues, or of some of them), *lying or being in the city and county, or town and county*, (as the case may be), *of* ——— *of the clear yearly value of* 40s. *over and above all rents and charges payable out of, or in respect of the same; and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above twelve calendar months, or that the same came to you within the time aforesaid, by descent, marriage, marriage settlement, devise, or promotion to a benefice in a church, or by promotion to an office; and that such freehold estate has not been granted or made to you fraudulently, on purpose to qualify you to give your vote; and that the place of your abode is at* —— *in* ——, *and that you are twenty-one years of age, as you believe, and that you have not been polled before at this election.*

tors in boroughs and towns corporate. A B, *and that I am* [specifying the addition, profession or trade] *and that the place of my abode is at* ———, *in the county of* ——— [and if it is a town consisting of more streets than one, specifying what street], *and that I have not before polled at this election, and that I verily believe myself to be of the full age of twenty-one years.*

Which oath or affirmation the returning officer and his deputies, and poll clerks, are to administer. *s.* 5.

Casting up the poll. The poll being ended, and the numbers cast up, if the returning officer is perfectly satisfied without a scrutiny, he declares the election according to the majority of votes; and when the poll is once declared and acknowledged, the election is complete. *Simeon's L. El.* 132. 135.

The return. The poll being thus taken, closed and declared, the returning officer must make his return of the persons duly chosen according to the mode prescribed by the writ, and statutes relating thereto. *Simeon's L. El.* 136.

That is to say, the returning officer in boroughs is to return his precept to the sheriff, with the persons elected by the majority: and the sheriff is to return the whole, together with the writ for the county and the knights elected thereupon, to the clerk of the crown in *Chancery*. 1 *Black. Com.* 180, 181.

When return to be made. And to this purpose it is enacted, that the returning officer at every election for members to serve for any county, city, borough or other place, shall immediately after the final close of the poll, or on the day next after, truly, fairly, and publicly declare, the names of the persons who have the majority of votes, and shall forthwith make a return of such persons; unless the returning officer, upon a scrutiny being demanded by any candidate, or any two electors, shall deem it necessary to grant the same; in which case he shall proceed thereon, but so as that in all cases of a general election, every returning officer having the return of the writ, shall cause a return of the member to be filed in the crown office, on or before the day on which such writ is returnable: and every other returning officer acting under a precept or mandate, shall make a return of the member in obedience thereto, six days before the day of the return of the writ; and so that in case of any election upon a writ issued during a session or prorogation of parliament, and a scrutiny being granted as aforesaid, then that a return shall be made within thirty days after the close of the poll, or sooner if the same can be done. 25 *Geo.* 3. *c.* 84. *s.* 1.

Scrutiny. And whenever a scrutiny shall be granted as aforesaid, and there shall be more parties than one; the returning officer shall decide alternately on the votes given for the different candidates who shall be parties to such scrutiny, or against whom the same shall be carried on. *s.* 2.

And it shall be lawful for such returning officers if they see cause during the continuance of any scrutiny, to administer an oath to any person *consenting to take the same*, touching the right of any person having voted at such election, or touching any other matter material towards carrying on such scrutiny. *s.* 6.

And if any person taking an oath or affirmation before any returning officer, shall commit wilful perjury, or if any person shall suborn any other person to take any such oath or affirmation, whereby he shall commit perjury, he shall incur such pains as are inflicted in 5 *Eliz. c.* 9. and 2 *Geo.* 2. *c.* 25. on persons guilty of wilful perjury. *s.* 8.

But nothing in this act shall affect, alter, or regulate the election for any place where particular regulations, touching the duration of polls and scrutinies, are enacted by statute. *s.* 9.

Copy of poll.

And by 7 & 8 *Will.* 3. *c.* 25, every sheriff, under-sheriff, mayor, bailiff, and other officer, to whom the execution of any writ or precept shall belong for electing members, shall forthwith deliver to such as shall desire the same a copy of the poll, paying a reasonable charge for writing the same, on pain to forfeit to every party grieved 500*l.* to be recovered by him or his administrators with costs. *s.* 6.

Manner of return.

And as to the form of the return, it is enacted, that after the election, the names of the persons chosen, whether present or absent, shall be written in an indenture (III) under the seals

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(III) The form of the indenture of election.

*This indenture, made in the liberty of* W *in the county of* M, *the* ——— *day of* ——— *in the* ——— *year of the reign, &c. between sir* C A, *knight, and sir* R G, *knight, sheriff of the county of* M *aforesaid, of the one part, and* J C, *esq. bailiff of the liberty of the dean and chapter of the collegiate church of* St. Peter's W, *in the county aforesaid; sir* J C, *baronet; sir* R G, *baronet; sir* C D, *knight of the most honourable order of the Bath; the honourable* W L, G S, F R, *baronet; the right honourable* F H, *commonly called lord viscount* D, F F, *and* N H, *esqrs;* F F, *esq. sir* W I, *baronet;* C B, *esq.* J G, *esq. and many other citizens, burgesses and inhabitants of the city, town and borough of* W, *of the other part,* WITNESSETH, *That by virtue of a certain precept directed from the said sheriff to the bailiff, and sewed to this indenture, (proclamation of the premises in said precept first mentioned, and of the day and place, as in the said precept is directed, first being made) the citizens who were present at the said proclamation, have freely and indifferently, according to the form of the statute in that case made and provided, and according to the tenor and effect of the aforesaid precept, and of the writ in the said pre-*

of the choosers, and tacked to the writ, *which indenture so sealed and tacked, shall be holden for the sheriff's return* to the said writ for the knights of the shires. 7 *Hen.* 4. *c.* 15.

And the certificate of the election is required to be the same both in county and borough elections *, that is, by indentures under the seals of the electors, and of the returning officer, who seals a counterpart thereof. *Simeon's L. El.* 137.

And in order the more particularly to enforce a regularity in the making of such return, and to prevent negligent, false, and double returns, various statutes have been enacted from time to time, and some of them at an early period. *Simeon's L. El.* 139, 140.

Negligent returns.

Thus by 5 *Ric.* 2. *st.* 2. *c.* 4, if a sheriff be negligent in making his return, or leave out of his return any city or borough bound, or of old wont to come to parliament, he shall be amerced, or otherwise punished as was accustomed in times past.

Also by 7 *Hen.* 4. *c.* 15, the sheriff is commanded, that he do certify the election made, at the day and place in the writ contained.

And by 11 *Hen.* 4. *c.* 1, justices of assize may inquire of returns made to writs of parliament, and if found by inquest that the return is contrary to the stat. 7 *Hen.* 4. *c.* 15, the sheriff shall incur 100*l.* to the king.

And by 10 & 11 *Will.* 3. *c.* 7, the sheriff or other officer having the execution and return of any writ for the choice of a member, shall, on or before the day that any parliament shall be called, and with all convenient expedition, not exceeding fourteen days after election, make return of the same to the clerk of

* For by 23 *Hen.* 6. *c.* 15. the mayor or bailiffs shall return to the sheriff the precept they received *by indenture between the sheriff and them* of the elections, and the names of the citizens and burgesses by them chosen.

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*cept recited, chosen one citizen of the most discreet and sufficient of the city and liberty aforesaid (that is to say) the honourable* E C, *esq. to which said* E C *so elected, the aforesaid citizens have given and granted full and sufficient power for themselves and the commonalty of the city, town, borough and liberty aforesaid, to do and consent to those things, which at the said parliament by the common council of the said kingdom (with God's assistance) shall happen to be ordained upon the affairs in the said precept specified, according to the form and effect of the said precept.* In witness whereof, as well the said sheriff as the aforesaid bailiff, citizens, burgesses and inhabitants of the city, town, borough and liberty aforesaid, to these indentures their seals have interchangeably put, the day and year first above mentioned.

the crown in *Chancery*, to be filed; and he shall pay to the clerk of the crown the ancient fees of 4*s.* for every knight of the shire, and 2*s.* for every citizen, burgess, or baron of the cinque ports, and have allowance thereof in his account.* *s.* 1.

And every sheriff or other officer, who shall not make the returns according to this act, shall forfeit 500*l.* one moiety to his majesty, and the other moiety to him that shall sue for the same in any of his majesty's courts at *Westminster*. *s.* 3.

False returns.

As to *false returns*, the stat. 23 *Hen.* 6. *c.* 14, *after reciting that the sheriff often returned citizens and burgesses not duly chosen, and sometimes such as were not returned by the mayor or other returning officer; and sometimes embezzled the writ, making no precept*, ENACTS, that if any sheriff shall make a return contrary to that or any other statute for elections, he shall incur the penalty of *st.* 8 *Hen.* 6. *c.* 7, viz. 100*l.* to the king, and a year's imprisonment without bail, and also pay to every person chosen and not duly returned 100*l.* to be recovered with costs in debt against the sheriff, his executors or administrators, by the party grieved, if he sue in three months after the beginning of the parliament, or in his default by any that will sue. *s.* 1.

And if any mayor or bailiff return to the sheriff any not duly chosen, he shall forfeit 40*l.* to the king, and 40*l.* to every person chosen and not returned, to be recovered as above. *Ibid.*

Moreover by stat. 7 & 8 *Will.* 3. *c.* 7, *all false returns*, wilfully made, are declared to be against law; and in case any person shall return any member to serve in parliament for any place contrary to the last determination in the house of commons of the right of election in such place, such return shall be deemed to be a false return. *s.* 1.

And every person who shall be duly elected to serve for any place, on such false return, may sue the officers and persons making or procuring the same, or any of them, and shall recover double damages with costs, on action brought within two years. *s.* 2.

Double returns.

And in order to prevent the evil of *double returns* it was by the same stat. 7 & 8 *Will.* 3. *c.* 7. enacted, that if any officer shall wilfully, falsely, and maliciously, return more persons than are required to be chosen by the writ or precept, the like remedy may be had against him, and the parties that willingly procure the same, by the party grieved. *s.* 3.

No member returned.

And it is enacted by 25 *Geo.* 3. *c.* 84, that if upon any writ issued for election of members, no return shall be made to the same on or before the day on which such writ is made return-

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* See also 25 *Geo.* 3. *c.* 84. *s.* 1, as to time of making the return, in p. 604. supra.

able ;—or if a writ shall have been issued during any session or prorogation, and no return shall be made to the same 52 days after the day on which such writ bears date ;—or if the return made in either of such cases shall not be a return of members, according to the requisition thereof, but contain special matters only concerning such election,—it shall be lawful for any person, having a right to vote at such election, or claiming to have had a right to be returned, as duly elected thereat, who shall think himself aggrieved, to petition the house of commons concerning the same ; and upon such petition being presented, a day and hour shall be appointed for taking the same into consideration, and notice thereof in writing shall be forthwith given by the speaker to the petitioners, and to the returning officer, accompanied with an order to them to attend the house at the time appointed, according to 10 *Geo.* 3. *c.* 16, and 11 *Geo.* 3. *c.* 42. * for regulating the trial of controverted elections ; which committee shall try *whether any, and which of the persons named in such petition ought to have been returned, or whether a new writ ought to issue ;* which determination shall be final ; and the house being informed thereof by the chairman of the select committee, shall order the same to be entered on their journals, and give directions for ordering a return to be made, or for altering the return, if made, or for issuing a new writ, or for carrying the said determination into execution. *s.* 10.

And the rules, prescribed by the said acts, shall be in full force with respect to select committees appointed by virtue of this act. *s.* 11.

And if the returning officer cannot be found, to be served with the notice or order before mentioned, or being served, shall not appear by himself, counsel, or agents, at the day appointed for taking such petition into consideration, the house may authorise any person to appear in the stead of him ; and in case there shall be more petitions than one presented, complaining of such return, or omission of a return, on distinct interests, or different grounds, the house shall determine from the nature of the case, whether the returning officer, or person appearing in-

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* The trials of controverted elections by select committees appointed by the house of commons, are regulated by the above acts, and several others since passed, viz. 28 *Geo.* 3. *c.* 52. 32 *Geo.* 3. *c.* 1. 34 *Geo.* 3. *c.* 83. 36 *Geo.* 3 *c.* 59. But as the powers of such committees are of a peculiar nature, and do not fall within the general design of this work, it is only necessary to notice the essential outlines of this judicature, viz. "On petition to the house of commons, complaining "of an undue election, 49 members of the house of commons shall "be chosen by ballot, out of whom each party shall strike one, till "they be reduced to the number of thirteen, who, together with two "more, of whom each party shall nominate one, shall be a select "committee for determining such controverted election." 41 *Geo.* 3. *sess.* 2. *c.* 101. 42 *Geo.* 3. *c.* 84. 706.

the stead of him, shall, together with such petitioners, be entitled to strike off from the list of members drawn by lot, as directed by 11 *Geo.* 3, in the case where there shall be more than two parties before the house, or whether such list shall be reduced by the parties severally presenting the said petitions only. *s.* 12.

And if any sheriff, or other returning officer who shall preside at any election, shall wilfully act contrary to this act, such person shall be liable to be prosecuted within one year after the fact, or six months after the conclusion of any proceedings in the house of commons, by information or indictment in the *King's Bench*, or at any court of *oyer* and *terminer*, great sessions, or gaol delivery, in which no *noli prosequi* or *cesset processus* shall be granted. *s.* 13.

'And if any sheriff or returning officer shall wilfully delay, 'neglect or refuse duly to return any person who ought to be 'returned, such person may, in case it shall be determined by 'a select committee, appointed as before directed, that such per- 'son was entitled to have been returned, sue the sheriff or offi- 'cer, and shall recover double the damages he shall sustain, to- 'ther with costs.' *s.* 14.

Penalty on bribing returning officers.

All contracts and securities given to procure any return of any member shall be adjudged void; and whoever makes such contract or security, or any gift or reward, to procure such false or double return, shall forfeit 300*l.* one third part to his majesty, another third part to the poor of the county or place concerned, and one third part to the informer with costs, to be recovered on action brought within two years. 7 & 8 *Will.* 3. *c.* 7. *s.* 4.

Returning officers to take no fees.

By stat. 7 & 8 *Will.* 3. *c.* 25, neither the sheriff or his under-sheriff, nor the mayor, bailiff, constable, port-reeve, or other officer, of any borough or town, to whom the execution of any writ or precept for electing doth belong, shall pay or take any fee for the making out, receipt, delivery, return, or execution, of any such writ or precept, on pain to forfeit 500*l.* to the party grieved, to be recovered by him or his administrators, with costs. *s.* 2.

Returning poll to sessions.

Lastly, by 10 *Ann.* *c.* 23, the sheriff, or returning officer, shall, within twenty days after such election, deliver over upon oath (which oath the two next justices of peace, one of the *quorum*, are to administer) unto the clerk of the peace, all the poll books of such elections, without any alteration, and in such counties where there are more than one clerk of the peace, the original poll-books to one of such clerks of the peace, and attested copies thereof to the rest, to be kept among the records of the peace. *s.* 5.

## *IV. Method of passing bills.*

An act of parliament must have the consent of the

lords, the commons, and the royal assent of the king, and whatsoever passeth in parliament by this threefold consent, hath the force of an act of parliament. 4 *Inst.* 25. 2 *Inst.* 157.

And in each house the act of the majority binds the whole, and this majority is declared by votes openly and publicly given. 1 *Black. Com.* 181, 182.

In the house of lords, the lords give their voices from the puisne lord in due order, by the word of *content* or *not content.* 4 *Inst.* 34.

The commons give their voices upon the question by *yea* or *no*; and if it be doubtful, and neither party yield, two are appointed to number them, one for the *yea's*, another for the *no's*, the *yea's* going out and the *no's* sitting; and thereof report is made to the house: at a committee, though it be of the whole house, the *yea's* go of one side of the house, and the *no's* on the other, whereby it will easily appear, which is the greatest number. 4 *Inst.* 35.

For the dispatch of business each house of parliament has its speaker. The speaker of the house of lords, whose office it is to preside there, and manage the formality of business, is the lord chancellor, or keeper of the king's great seal, or any other appointed by the king's commission; and if none be so appointed, the house of lords (it is said) may elect:—the speaker of the house of commons is chosen by the house; but must be approved by the king. And herein the usage of the two houses differs, that the speaker of the house of commons cannot give his opinion or argue any question in the house; but the speaker of the house of lords if a lord of parliament may. 1 *Black. Com.* 181.

To the passing of a bill, the assent of the knights, citizens, and burgesses must be in person, but the lords may give their votes by proxy; and the reason hereof is, that the barons did always sit in parliament in their own right, as part of the *pares curtis* of the king; and therefore as they were allowed to serve by proxy in the wars, so they had leave to make their proxies in parliament; but the commons coming only as representing the *barones minores*, and the socage tenants in the county, and citizens and burgesses, as representing the men of their cities and boroughs, they could not constitute proxies, because they themselves were but proxies and representatives of others, and therefore could not constitute a proxy in their place. 4 *Inst.* 12.

To bring a bill into the house, if the relief sought by it is of a private nature, it is first necessary to prefer a petition; which must be presented by a member, and usually sets forth the grievance desired to be remedied. This petition (when founded on facts that may be in their nature disputed) is referred to a committee of members, who examine the matter alledged, and accordingly report it to the house, and then (or

otherwise upon the mere petition) leave is given to bring in the bill. In public matters the bill is brought in upon motion made to the house, without any petition at all. 1 *Black. Com.* 182. *Comyns's Dig. tit. Par.* (g. 10).

Formerly all bills were drawn in the form of petitions, which were entered upon the parliament rolls, with the king's answer thereunto subjoined; not in any settled form of words, but as the circumstances of the case required; and at the end of each parliament the judges drew them into the form of a statute, which was entered on *the statute rolls.* In the reign of *Henry* V. to prevent mistakes and abuses, the statutes were drawn up by the judges before the end of the parliament; and in the reign of *Henry* VI. bills in the form of acts, according to the modern custom, were first introduced. 2 *Black. Com.* 182.

The persons directed to bring in the bill, present it in a competent time to the house, drawn out on paper, with a multitude of blanks or void spaces, where any thing occurs that is dubious, or necessary to be settled by the parliament itself; such especially as the precise date of times, the nature and quantity of penalties, or of any sums of money to be raised; being indeed only the skeleton of the bill. 1 *Black. Com.* 182.

In the house of lords, if the bill begins there, it is, when of a private nature, referred to two of the judges, to examine and report the state of the facts alleged, to see that all necessary parties consent, and to settle all points of technical propriety. 1 *Black. Com.* 182.

This is read a first time, and at a convenient distance a second time; and after each reading the speaker opens to the house the substance of the bill, and puts the question, whether it shall proceed any farther. The introduction of the bill may be originally opposed, as the bill itself may at either of the readings; and if the opposition succeeds, the bill must be dropped for that session: as it must also, if opposed with success in any of the subsequent stages. 1 *Black. Com.* 183.

After the second reading it is committed, that is, referred to a committee: which is either selected by the house in matters of small importance, or else, upon a bill of consequence, the house resolves itself into a committee of the whole house. 1 *Black. Com.* 183.

A committee of the whole house is composed of every member; and to form it, the speaker quits the chair (another member being appointed chairman), and may sit and debate as a private member. 1 *Black. Com.* 183.

In these committees the bill is debated clause by clause, amendments made, the blanks filled up, and sometimes the bill entirely new modelled. 1 *Black. Com.* 183.

After it has gone through the committee, the chairman reports it to the house with such amendments as the committee have made; and then the house reconsiders the whole bill again, and

the question is repeatedly put upon every clause and amendment. 1 *Black. Com.* 183.

When the house hath agreed or disagreed to the amendments of the committee, and sometimes added new amendments of its own, the bill is then ordered to be engrossed, or written in a strong gross hand, on one or more long rolls of parchment sewed together. 1 *Black. Com.* 183.

When this is finished, it is read a third time, and amendments are sometimes then made to it; and if a new clause be added, it is done by tacking a separate piece of parchment on the bill, which is called a rider. 1 *Black. Com.* 183.

The speaker then again opens the contents; and holding it up in his hands, puts the question, whether the bill shall pass. If this is agreed to, the title to it is then settled; which used to be a general one for all the acts passed in the session, till in the first year of *Henry* VIII. distinct titles were introduced for each chapter. 1 *Black. Com.* 183.

After this, one of the members is directed to carry it to the lords, and desire their concurrence; who attended by several more, carries it to the bar of the house of peers, and then delivers it to their speaker, who comes down from his woolsack to receive it. 1 *Black. Com.* 183, 184.

It there passes through the same forms as in the other house, except engrossing, which is already done; and, if rejected, no more notice is taken, but it passes *sub silentio*, to prevent unbecoming altercations. 1 *Black. Com.* 184.

But if it is agreed to, the lords send a message by two masters in *Chancery* (or upon matters of high dignity or importance, by two of the judges), that they have agreed to the same: and the bill remains with the lords, if they have made no amendment to it; but if any amendments are made, such amendments are sent down with the bill to receive the concurrence of the commons. 1 *Black. Com.* 184.

If the commons disagree to the amendments, a conference usually follows between members deputed from each house; who for the most part settle and adjust the difference: but if both houses remain inflexible, the bill is dropped. 1 *Black. Com.* 184.

If the commons agree to the amendments, the bill is sent back to the lords by one of the members, with a message to acquaint them therewith. 1 *Black. Com.* 184.

The same forms are observed *mutatis mutandis*, when the bill begins in the house of lords. 1 *Black. Com.* 184.

But when an act of grace or pardon is passed, it is first signed by his majesty, and then read once only in each of the houses, without any new engrossing or amendment. 1 *Black. Com.* 184.

And when both houses have done with any bill, it is always deposited in the house of peers, to wait the royal assent, except

in the case of a bill of supply, which after receiving the concurrence of the lords, is sent back to the house of commons. 1 *Black. Com.* 184.

The royal assent may be given two ways; First, in person when the king comes to the house of peers, in his crown and royal robes, and sending for the commons to the bar, the titles of all the bills that have passed both houses are read; and the king's answer, is declared by the clerk of the parliament in *Norman French*; that is to say, if the king consents to a public bill, the clerk usually declares, *le roy le veut*, "the king wills it so to be;" if to a private bill, *soit, fait, comme il est desire*, "be it as it is desired;" if the king refuses his assent, it is in the gentle language of *le roy s' avisera*, "the king will advise upon it." When a bill of supply is passed, it is carried up and presented to the king by the speaker of the house of commons, and the royal assent is thus expressed, *le roy remercie ses loyal subjects, accepte lour benevolence, et aussi le veut*, "the king thanks his loyal subjects, accepts their benevolence, and wills it so to be." In case of an act of grace, which originally proceeds from the crown, and has the royal assent in the first stage of it, the clerk of the parliament thus pronounces the gratitude of the subject: *les prelats, seigneurs, et commons, en ce present parliament assembles, au nom de touts, vous autres subjects remercient tres humblemen e votre majeste, et prient a Dieu vous donner en sante bone vie et longue*," the prelates, lords and commons, in this present parliament assembled, in the name of all your other subjects most humbly thank your majesty, and pray to God to grant you in health and wealth long to live." Secondly, by stat. 33 *Hen.* 8. *c.* 21, the king may give his assent by letters patent under his great seal, signed with his hand, and notified in his absence to both houses assembled together in the high house; for it is by that statute declared, that the king's royal assent by his letters patent under his great seal, and signed with his hand, and notified in his absence to the lords and commons, is and ever was of as good strength, as though the king had been present, and assented publickly to the same, and shall hereafter be taken for effectual. 1 *Black. Com.* 185.

This statute or act is placed among the records of the kingdom, there needing no formal promulgation to give it the force of a law; because every man in *England* is, in judgment of law, party to the making of an act of parliament, being present thereat by representation. 1 *Black. Com.* 185.

However, a copy thereof is usually printed at the king's press for the information of the whole land *. 1 *Black. Com.* 185.

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* Formerly, before the invention of printing, the statutes were used to be published by the sheriff of every county; the king's writ being

Formerly every statute began to have effect, unless a particular time for its commencement was therein mentioned, from the first day of that session of parliament in which it was made. 1 *Rol. Abr.* 465. 4 *Inst.* 25, 27. *Hob.* 309. *Sid.* 310.

But it is now enacted by 33 *Geo.* 3. *c.* 13, that the clerk of parliament shall endorse in *English*, on every act immediately after the title, the day, month, and year, when the same shall have passed and received the royal assent, which indorsement shall be part of such act, and the date of its commencement, where no other commencement shall be provided.

## *V. Privileges of parliament.*

The privileges of parliament are very large and indefinite, and were principally established in order to protect its members, not only from being molested by their fellow subjects, but also more especially from being oppressed by the power of the crown. 1 *Black. Com.* 163, 164.

Some of the more notorious privileges of the members of either house, are privilege of speech, of person, of their domestics, and of their lands and goods. 1 *Black. Com.* 164.

Privilege of speech.

1. By 1 *Will. & Mar. sess.* 2. *c.* 2, it is declared that freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

And this freedom of speech is particularly demanded of the king in person, by the speaker of the house of commons, at the opening of every new parliament. 1 *Black. Com.* 164.

Privilege of persons, servants, lands, and goods.

2. By the common law, a member of parliament shall have the privilege of parliament, not only for himself and his servants to be free from arrest, subpœna, citation, and the like; but also for his horses and goods to be free from distresses. 4 *Inst.* 24, 25.

But privilege of parliament doth not extend to high treason, felony, breach (or surety) of the peace, or any indictable offence whatsoever. 4 *Inst.* 25. 1 *Black. Com.* 166.

For all crimes are treated by the law as *against the peace*; and instances have not been wanting, wherein privileged persons have been convicted of misdemeanors, and committed, or prosecuted to outlawry, even in the middle of a session, which pro-

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sent to him at the end of every session, together with a transcript of all the acts made at that session, commanding him *to cause such statutes and all the articles therein contained, to be proclaimed at such places as he should see fit*, and the usage was to proclaim them at his county court, and there to keep them, that whoever would, might read or take copies thereof; which custom continued till the reign of *Henry* VII. 1 *Black. Com.* 185, 186.

ceeding has afterwards received the sanction and approbation of parliament. 1 *Black. Com.* 166.

Also peers of the realm, whether spiritual or temporal *, are punishable by attachment for contempts against the king's court in many instances; as for rescuing a person arrested by due course of law; for proceeding in a cause against the king's writ of prohibition; for disobeying other writs, wherein the king's prerogative or the liberty of the subject are nearly concerned; such as for refusing obedience to a writ of *habeas corpus*; and for other contempts which are of an enormous nature. 2 *Hawk.* c. 22. s. 33. 1 *Burr. Rep.* 634.

This privilege of the person in civil causes, in a peer (by the privilege of peerage) is for ever sacred and inviolable; and in a commoner (by the privilege of parliament) for forty days after every prorogation, and for forty days before the next appointed meeting; which is now in effect as long as the parliament subsists, it seldom being prorogued for more than fourscore days at a time. 1 *Black. Com.* 165.

Suing members of parliament.

But by 10 *Geo.* 3. c. 50, any person may, *at any time*, commence and prosecute any action or suit, in any court of record, or court of equity, or of admiralty, and in all causes matrimonial and testamentary, in any court having cognizance of causes matrimonial and testamentary, against any peer or lord of parliament of *Great Britain*, or any of the knights, citizens, and burgesses, and the commissioners for shires and burghs of the house of commons of *Great Britain*, or against their menial or other servants, or any other persons entitled to the privilege of parliament of *Great Britain*, and no such action, suit, or other process or proceeding thereupon, shall be impeached, stayed, or delayed, under colour of any privilege of parliament.

PROVIDED *that this shall* not *subject the person of any of the knights, citizens, and burgesses, or the commissioners of shires and burghs of the house of commons of* Great Britain, *to be arrested or imprisoned upon any such suit or proceedings.* s. 2.

And the plaintiff may prosecute at law by summons, and distress infinite, or by original bill and summons, attachment, and distress infinite, until the defendant shall enter a common appearance, or file common bail. 12 & 13 *Will.* 3. c. 3. s. 2. 11 *Geo.* 2. c. 24. s. 2.

And the court out of which the writ (*distringas*) proceeds, may order the issues levied to be sold, and the money arising thereby to be applied to pay costs to the plaintiff, and the surplus to be retained until the defendant shall have appeared, or other purpose of the writ be answered. 10 *Geo.* 3. c. 50. s. 3.

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* And consequently all other members of parliament.

And when the purpose of the writ is answered, the said issues shall be returned: or, if sold, what shall remain, shall be repaid to the party distrained upon. *s.* 4.

But as the mode of proceeding by distringas is extremely dilatory and expensive, it is now enacted by 45 *Geo.* 3. *c.* 124, that the plaintiff upon affidavit of the personal service of the summons may enter an appearance for the defendant, and proceed as if such defendant had entered his appearance. *s.* 3.

And in equity the plaintiff may proceed by letter or subpœna; and after service thereof, may for want of appearance or answer, or non-performance of an order or decree, or for breach thereof, sequester the real and personal estate of the party, but not arrest his body. 12 & 13 *Will.* 3. *c.* 3. *s.* 2. 11 *Geo.* 2. *c.* 24. *s.* 2.

But as some persons have stood out to the return of such process of sequestration, and the same is not sufficient to enforce an appearance, it is enacted by 45 *Geo.* 3. *c.* 124, that the court upon producing the return of such sequestration may, on motion or other application of the plaintiff, appoint a clerk in court to enter an appearance for the defendant, and if after appearance, no answer shall be put in within the time allowed by the rules of the court, then the plaintiff may apply for an order that the bill may be taken pro confesso.

And the court shall make an order that such bill shall be taken pro confesso, unless the defendant within eight days shew cause to the contrary, and such bills in equity, &c. so taken pro confesso, ~~shall be~~ taken and read in evidence.

Also obedience may be enforced to any rule of the *King's Bench*, *Common Pleas*, or *Exchequer*, against any person entitled to privilege of parliament, by distress infinite. 10 *Geo.* 3. *c.* 50. *s.* 5.

Bankrupt.

Likewise for the benefit of commerce it is provided by 4 *Geo.* 3. *c.* 33, that the petitioning creditors, on affidavit of the debt, and that they verily believe that the debtor is a trader within the statutes of bankruptcy, may issue out a summons, or an original bill and summons, and serve him with a copy thereof; and if he shall not, within two months after service, pay the debt, or enter into bond to pay such sum as shall be recovered with costs, he shall be adjudged a bankrupt from the time of service of the summons, and the creditors may proceed against him as against other bankrupts; provided that this shall not extend to subject any person entitled to privilege to be arrested during the time of such privilege, except in cases made felony by any of the statutes of bankruptcy.

And by 45 *Geo.* 3. *c.* 124, when any summons or original bill and summons shall be sued out against any person deemed a merchant, banker, broker, factor, scrivenor or trader within the description of the acts relating to bankrupts having privilege of parliament, and such affidavit of the debt duly made and filed,

and such trader shall enter into such bond; every such trader shall also within two months after such personal service of such summons cause an appearance to be entered to such action, and on default thereof, he shall be accounted a bankrupt from the time of the service of such summons, and any creditor may sue out a commission. *s.* 1.

And where any decree or order shall have been pronounced in the court of chancery or exchequer, or any order made in the matter of bankruptcy, or in the matter of any lunacy against any trader having privilege of parliament, *thereby ordering such person to pay any money*, and the person so ordered shall disobey such order, the same having been duly sued, it shall be lawful for the party, to apply to the court to fix a peremptory day for the payment, and if such trader being personally served with such order, at least eight days before the day therein appointed for payment, shall neglect or omit to pay the same, then such person shall be deemed a bankrupt from the time of the service of such last mentioned order, and any creditor may sue out a commission. *s.* 7.

But nothing in this act shall extend to subject any person entitled to privilege of parliament to be arrested, restrained or imprisoned during the term of such privilege. *s.* 8.

### *VI. The continuance, adjournment, prorogation, and dissolution of parliament.*

In order to prevent the great and continued expences of frequent elections, and the violent heats and animosities consequent thereupon, and for the peace and security of the government, it was enacted by 1 *Geo.* 1. *st.* 2. *c.* 38, that the then present parliament, and all parliaments that should at any time thereafter be called, assembled or held, should and might respectively have continuance for seven years and no longer, to be accounted from the day on which by the writ of summons the parliament is appointed to meet, unless sooner dissolved by his majesty, his heirs, or successors.

Thus the parliament must expire, or die a natural death, at the end of every seventh year, if no sooner dissolved by the royal prerogative. 1 *Black. Com.* 189.

For, as the king has the sole right of convening the parliament, so also it is a branch of the royal prerogative, that he may (*whenever he pleases*) prorogue the parliament for a time, or put a final period to its existence. 1 *Black. Com.* 188.

A parliament may also be dissolved by the demise of the crown. This dissolution formerly happened immediately upon the death of the reigning sovereign; for he being considered in law, as the head of the parliament; that failing, the whole body was held to be extinct. 1 *Black. Com.* 188.

But the calling a new parliament immediately on the inaugu-

ration of the successor being found inconvenient, and danger, being apprehended from having no parliament in being, in case of a disputed succession, this inconvenience is now provided against by statute. 1 *Black. Com.* 188.

For it is enacted, by 37 *Geo. 3. c.* 127, that in case of the demise of his majesty, subsequent to the dissolution or expiration of a parliament, and before the day appointed by the writs of summons for assembling a new parliament, then the last preceding parliament shall immediately convene and sit at *Westminster*, and be a parliament, to continue for six months, and no longer, as if the same parliament had not been dissolved or expired, but subject to be sooner prorogued or dissolved by the person to whom the crown shall come. *s.* 3.

And in case of the demise of his majesty's heir or successor within the said six months, and before the same shall have been dissolved, or after the same shall have been dissolved, and before a new parliament shall have met, then the said last preceding parliament shall immediately convene and sit, and continue to be a parliament for six months longer, to be computed from such last demise, but subject to be sooner prorogued or dissolved by the person who shall succeed to the crown, and so often as any such demise shall happen before a new parliament shall have met. *s.* 4.

And in case of the demise of his majesty, on the day appointed by the writs of summons for assembling a new parliament, or at any time after such day, and before such new parliament shall have met, and sat, such new parliament shall, immediately after such demise, convene and sit at *Westminster*, and be a parliament, to continue for six months, but subject to be sooner prorogued or dissolved. *s.* 5.

An *adjournment* is no more than a continuance of the session from one day to another, as the word signifies; and this is done by the authority of each house separately every day: and sometimes for a fortnight or a month together, as at *Christmas* or *Easter*, or upon other particular occasions, but the adjournment of one house is no adjournment of the other. 1 *Black. Com.* 186.

It hath also been usual, when his majesty hath signified his pleasure that both or either of the houses should adjourn themselves to a certain day, to obey the king's pleasure so signified, and to adjourn accordingly; otherwise, besides the indecorum of a refusal, a prorogation would assuredly follow, which would often be very inconvenient to both public and private business; for *prorogation*, puts an end to the session; and then such bills as are only begun and not perfected, must be resumed *de novo*, if at all, in a subsequent session; whereas, after an adjournment, all things continue in the same state as at the time of the adjournment made, and may be proceeded on without any fresh commencement. 1 *Black. Com.* 186, 187.

By 39 & 40 *Geo.* 3. *c.* 14, in all cases where both houses of

parliament shall stand adjourned for more than fourteen days from the day of the date of the proclamation hereinafter mentioned, it shall be lawful for his majesty to issue his proclamation, with the advice of his privy council, thereby declaring that the said parliament shall meet on a day not less than fourteen days from the day of the date of such proclamation, and the parliament shall thereupon stand adjourned to the day and place declared in such proclamation, notwithstanding any previous adjournment to any longer day. *s.* 1.

All the orders which shall have been made by either house, and appointed for the day to which such house shall have been adjourned, or to any day subsequent thereto, other than any order that shall have been specially appointed for particular days by either house, and declared to be so fixed, notwithstanding any meeting of parliament under this act, and also except any order made under the provisions of any act, shall be deemed to have been appointed for the day on which the parliament shall meet in pursuance of such proclamation. *s.* 2.

A *prorogation* is the continuance of the parliament from one session to another, as an adjournment is a continuation of the session from day to day; this is done by the royal authority, expressed either by the lord chancellor in his majesty's presence, or by commission from the crown, or frequently by proclamation. Both houses are necessarily prorogued at the same time, it not being a prorogation of the house of lords or commons, but of the parliament. The session is never understood to be at an end until a prorogation; though *unless some act be passed or some judgment given* in parliament, it is in truth no session at all, but a *convention.* 1 *Black. Com* 187. 4 *Inst.* 38.

And by 37 *Geo.* 3. *c.* 127, whenever his majesty shall, with the advice of the privy council, issue his proclamation giving notice that parliament shall meet for the dispatch of business on any day not less than fourteen days from the date of such proclamation, the same shall be a sufficient notice to all persons, and the parliament shall thereby stand prorogued to the day and place therein declared, notwithstanding any previous prorogation to any longer day. *s.* 1.

*Parsnips.* See TRESPASS.

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## PARTITION.

A WRIT of *partition (partitione facienda)* issues in order to give every one a part, where two or more persons hold lands and tenements as joint tenants, tenants in common, coparceners,

and one or them refuse to join in partition. *Fitz. Nat. Brev.* 61, 62. *Wood's Inst.* b. 4. 569.

Upon this writ the sheriff shall go to the lands, and make partition thereof by the verdict of a jury there impanelled, and assign to each parcener a part in severalty. 1 *Black. Com.* 189.

And by 8 & 9 *Will.* 3. *c.* 31, when the high sheriff by reason of distance, infirmity, or hindrance, cannot conveniently be present at the execution of any judgment in partition, the under sheriff, in presence of TWO JUSTICES OF PEACE, may proceed to execution by inquisition; and the high sheriff thereupon shall make the same return as if he were personally present: and the tenants of the lands shall be tenants for such part set out severally to the respective owners, under the same rents and reservations; and the owners of the several purparts shall make good unto their respective tenants the said parts severally, as they were bound to do before partition made. *s.* 4.

And the sheriffs, their under sheriffs and deputies, and in case of disability in the high sheriff, ALL JUSTICES OF PEACE, shall give due attendance to the executing such writ of partition (unless reasonable cause be shewn to the court upon oath), or otherwise be liable to pay unto the demandant such costs and damages as shall be awarded by the court, not exceeding 5l. for which the demandant may bring his action in any of his majesty's courts at *Westminster.* And in case the demandant doth not agree to pay unto the sheriffs or under sheriffs, justices and jurors, such fees as they shall demand, the court shall award what each person shall receive, having respect to the distance of the place from their habitations, for which they may severally bring their actions. *s.* 5.

*Partridges.* See GAME.

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## PAWNBROKERS.

What persons deemed pawnbrokers.

ALL persons who shall take, by way of pawn, pledge, or exchange, from any person whomsoever, any goods for the repayment of money lent thereon, shall be deemed pawnbrokers. 25 *Geo.* 3. *c.* 48. *s.* 5.

License.

And all persons using the trade of a pawnbroker in *Great Britain*, shall annually take out a licence from the stamp office*,

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* For the duty thereon. See STAMPS.

and shall renew the same annually, ten days at least before the end of the year, on pain of forfeiting 50*l.* to be recovered in the courts at *Westminster.* 25 *Geo.* 3. c. 48. *s.* 1, 2, 3, 4. 12.

But nothing in this act shall extend to persons who lend money upon pawn or pledge at 5*l. per cent. per annum* interest, without taking any greater profit for the loan of such money lent. *s.* 6.

Also persons in partnership and carrying on trade in one house only, shall not be obliged to take out more than one licence. *s.* 8.

And no person shall keep more than one house or shop by virtue of one licence. *s.* 7.

Rate of interest allowed to be taken.

By 39 & 40 *Geo.* 3. *c.* 99, it shall be lawful for a pawnbroker to take of persons applying to redeem any goods pawned a profit, after the following rates, over and above the principal sum lent upon the pledge, viz.

For every pledge upon which there shall have been lent any sum not exceeding 2*s.* 6*d.* one halfpenny for one calendar month, and the same for every calendar month afterwards including the current month in which such pledge shall be redeemed, although such month shall not be expired:

For every pledge upon which there shall have been lent 5*s.*—1*d.*: 7*s.* 6*d.*—1½*d.*: 10*s.*—2*d.*: 12*s.* 6*d.*—2½*d.*: 15*s.*—3*d.*: 17*s.* 6*d.*—3½*d.*: 1*l.*—4*d.*: and so on progressively and in proportion for any sum not exceeding 40*s.*

For every pledge upon which there shall have been lent any sum exceeding 40*s.* and not 42*s.*—8*d.*

And for every pledge upon which there shall have been lent any sum exceeding 42*s.* and not exceeding 10*l.*—at the rate of 3*d.* and no more, for every 20*s.* by the calendar month, including the current month, and so in proportion for any fractional sum:

Which sums shall be taken in full satisfaction for all interest and charges for warehouse room. *s.* 2.

But in all cases where any intermediate sum lent shall exceed 2*s.* 6*d.* and not 40*s.* the person lending may take after the rate of 4*d.* for the loan of 20*s.* by the calendar month, including the current month. *s.* 3.

Farthings to be given in exchange.

In all cases where the sum taken by any pawnbroker, either as profit, or as part principal and part profit, shall amount to a sum of which the piece of money of the lowest denomination shall be one farthing; and where the person applying to redeem shall have paid down the sum due, except the last farthing, and shall not be able to produce a current farthing, but shall in lieu thereof tender one halfpenny, in order to discharge the remaining farthing, the pawnbroker shall, in exchange thereof, deliver unto such person one good farthing, or in default thereof shall wholly abate the said farthing from the sum to be received by him. *s.* 4.

Abatement if goods are redeemed within seven days after the first month.

In all cases [of] the party applying for the redemption of goods pawned within seven days after the expiration of the first calendar month after the same shall have been pledged, he shall be at liberty to redeem the same without paying any thing for the said seven days, or such part as shall have elapsed; and in all cases [of] the party applying after the expiration of the first seven, and before the expiration of the first fourteen days of the second calendar month, he shall be at liberty to redeem upon paying the profit payable for one calendar month and the half of another; but applying after the expiration of the first fourteen days, and before the expiration of the second month, it shall be lawful for the pawnbroker to take the profit of the whole second month; and the like regulation shall take place in every subsequent calendar month. *s.* 5.

An account of all goods pawned to be entered in books.

All persons who shall take by way of pawn, of any persons whomsoever, any goods or chattels, and whereon shall be lent any sum *exceeding* 5*s.* shall before he shall advance any money upon such pawn enter in a book to be kept by him, a description of the goods, and also the sum advanced thereon, with the day of the month and year, and the name of the person by whom such goods are pawned, and the name of the street and number of the house numbered, where such person shall abide, and whether such person is a lodger in, or the keeper of such house, by using the letter "L" if a lodger, and the letter "H" if a housekeeper, and also the name and abode of the owner of such goods, according to the information of the person pawning the same, into all which circumstances the pawnbroker is to inquire of the party before any money shall be lent, and in all cases where the money lent shall not exceed 5*s.* such entry shall be made in such book within four hours next after the said goods shall have been pawned; and every pledge upon which shall be lent any sum above 10*s.* shall be entered in the manner aforesaid in a book separate from all other pledges whatever; and every such entry of such pledge whereon shall be lent any sum of money *exceeding* 10*s.* shall be numbered in such book progressively as they are received in pawn, in the manner following, viz. the first pledge received in pawn in the month of *September* next, shall be numbered No. 1. the second No. 2. and so on progressively until the end of the month; and the first pledge that is received in the next month shall be numbered No. 1. and the second No. 2. and so on progressively, and in like manner until the end of the month; and the like regulation with respect to the number of all pledges above 10*s.* shall be observed in every succeeding month throughout the year; and upon every note or memorandum respecting any such pledge whereon shall be lent any sum exceeding 10*s.* as aforesaid, shall be fairly written or printed the number of the entry of such pledge so entered in such book; and every such person shall,

at the time of taking of every pawn, give to the person pawning, a note or memorandum written or printed, or in part written and in part printed, containing therein in like manner a description of the goods received in pawn, and also the sum advanced thereon, with the day of the month and year, and the name and abode, and the number of the house, if numbered, of the person by whom such goods are so pawned, and whether such person is a lodger or housekeeper by using the letter "L" if a lodger, and the letter "H" if a housekeeper, and also the name and abode of the owner thereof, according to the information aforesaid; and upon which said note, or on the back whereof, shall be moreover fairly written or printed, the name and abode of the pawnbroker; which note or memorandum the party pawning shall take in all cases, and the pawnbroker shall not receive such pledge unless the party pledging shall take such note. *s.* 6.

Charge for duplicates.

And every such note where the sum lent shall be less than 5*s.* shall be delivered *gratis*; and where the sum lent shall be 5*s.* and less than 10*s.* such pawnbroker may take one halfpenny for the same; and where the sum lent shall be ten, and less than 20*s.* such pawnbroker may take one penny for the same; and where the sum lent shall be 20*s.* or upwards, and less than 5*l.* the sum of 2*d.* for the same; and where the sum lent shall be 5*l.* or upwards, the sum of 4*d.* and no more; and which note shall be produced to the pawnbroker before he shall be obliged to re-deliver the goods, except as herein-after is excepted. *s.* 6.

Interest taken to be indorsed on duplicates.

In all cases where any goods shall be redeemed, the pawnbroker shall at the time of redemption indorse upon every duplicate respecting such pawn, the amount of the profit taken by him, and shall keep such duplicate in his custody for one year following. *s.* 7.

Penalty on pawning goods the property of others.

If any person shall knowingly and designedly pawn, pledge, or exchange, or unlawfully dispose of the goods of any other person not being employed by the owner thereof so to do, it shall be lawful for any justice to grant his warrant to apprehend any person so offending, and if he shall be thereof convicted, by the oath of any credible witness, or by confession before any justice, every such offender shall forfeit not exceeding 5*l.* nor less than 20*s.* and also the full value of the goods pawned, pledged, exchanged, or disposed of, such value to be ascertained by such justice, and in case the said forfeitures shall not be forthwith paid, the justice shall commit the party to the house of correction or some other public prison of the county or place where the offender shall reside, or be convicted, there to remain and be kept to hard labour for not exceeding three calendar months, unless the said forfeiture shall be sooner paid; and if within three days before the expiration of the said term of commitment the said forfeitures shall not be paid, the said justice at his discretion

may order the person convicted to be publicly whipped in the house of correction, or in some other public place of the county where the offence shall have been committed, as to such justice shall seem proper; and the said forfeitures when recovered, shall be applied towards making satisfaction thereout to the party injured, and defraying the costs of the prosecution, as shall be adjudged reasonable by the justice; but if the party injured shall decline to accept of such satisfaction and costs, or if there shall be any overplus of the said respective forfeitures, after making such satisfaction, and paying such costs, then such forfeitures, or the overplus thereof, shall be applied for the use of the poor of the parish, and shall be paid to the overseers for that purpose. *s.* 8.

Forging or counterfeiting duplicates.

If any person whosoever shall counterfeit, forge, or alter, or cause or procure to be counterfeited, forged, or altered any such note or memorandum, or shall utter, vend, or sell any such note knowing the same to be counterfeited, forged or altered, with intent to defraud any person whomsoever, such person shall be punished as herein-after mentioned; and it shall be lawful for any person to whom any note shall be produced, which he shall have reason to suspect have been counterfeited, forged or altered, to seize such person producing the same, and to deliver him into the custody of a constable, who shall convey such person before some justice of the peace; and if upon examination it shall appear to the satisfaction of such justice that the person charged with such offence is guilty, then the said justice is to commit the party to the common gaol or house of correction, there to be imprisoned for not exceeding three calendar months, at the discretion of such justice. *s.* 9.

Persons offering goods in pawn not giving a good account of themselves.

In case any person who shall offer by way of pawn, pledge, exchange, or sale, any goods, shall not be able, or shall refuse to give satisfactory account of himself, or of the means by which he became possessed of such goods, or shall wilfully give any false information as to whether such goods are his own property or not, or of his name and abode, or of the name and abode of the owner, or if there shall be any other reason to suspect that such goods are stolen, illegally obtained, or if any person not entitled, nor having any colour or title by law to redeem goods pledged shall attempt to redeem the same, it shall be lawful for any person to whom such goods shall be offered, or with whom such goods are in pledge, to seize such person and the said goods, and to deliver such person into the custody of a constable, who shall convey such person and the said goods before some justice; and if such justice shall, upon examination, have cause to suspect that the said goods were stolen, or illegally obtained, or that the person offering to redeem the same shall not have any pretence or colour of right to redeem the same, it shall be lawful for such justice to commit such person into safe custody, for such reasonable time as shall be necessary for the obtaining proper information, in

order to be further exaamined; and if upon either of the said examinations it shall appear to the satisfaction of such justice that the said goods were stolen or illegally obtained, or that the person offering to redeem the same, hath not any pretence or colour of right so to do, the said justice is to commit the party to the common gaol or house of correction, there to be dealt with according to law, where the nature of the offence shall authorize such commitment by any other law, and where the nature of the offence shall not authorize such commitment by any other law, then such commitment shall be for not exceeding three calendar months, at the discretion of such justice. *s.* 10.

Penalty on receiving goods in pawn in a state of manufacture, or linen put out to wash, &c.

If any person shall knowingly buy or take in as a pledge or in exchange, any goods of any manufacture, or of any part or branch of any manufacture, either mixed or separate, or any materials whatsoever plainly intended for the composing or manufacturing of any goods, after such goods or materials respectively are put into a state or course of manufacture, or into a state for any process or operation to be thereupon or therewith performed, and before such goods or materials are completed for the purposes of wear or consumption; or any linen or apparel, which goods, materials, linen or apparel, shall be intrusted to any person to wash, scour, iron, mend, manufacture, work up, finish, or make up, and shall be convicted of the same on the oath of one witness, or on confession before one justice, such person shall forfeit double the sum lent on the same, to be paid to the poor of the parish, to be recovered in the same manner as other forfeitures are by this act, and shall likewise be obliged to restore the said goods and materials to the owner in the presence of the said justice. *s.* 11.

Such goods may be restored on a search warrant.

If the owner of any such goods, materials, linen, or apparel, shall make out, either on his oath, or by the oath of any credible witness, or being a *Quaker*, by solemn affirmation before any justice, that there is just cause to suspect that any person within the jurisdiction of such justice hath taken to pawn, or by way of pledge or in exchange, any such goods or materials, linen, or apparel of such owner, and without the privity or authority of such owner, and shall make appear to the satisfaction of such justice probable grounds for such suspicion, then any justice of the peace may issue his warrant for searching, within the hours of business, the house, warehouse, or any place of any such person who shall be charged on oath or affirmation as aforesaid, as suspected; and if the occupier of any house, warehouse, or other place wherein any such goods, materials, linen, or apparel, shall on oath or affirmation as aforesaid be charged or suspected to be, shall, on request made to him, to open the same, by any peace officer authorized to search there, by warrant from any justice of the peace, refuse to open the same and permit the same to

be searched, it shall be lawful for any peace officer to break open any such place within the hours of business, and to search as he shall think fit therein for the goods suspected to be there, doing no wilful damage; and no pawnbroker or other person shall oppose or hinder any such search; and if upon the search any of the goods, materials, linen, or apparel shall be found, and the property of the owner thereof shall be made out to the satisfaction of such justice by the oath of one witness, or if such witness be a *Quaker*, by solemn affirmation, or by the confession of the person charged with such offence, such justice shall thereupon cause the goods, materials, linen, or apparel found, to be forthwith restored to the owner. *s.* 12.

Owner of goods unlawfully pawned may have a warrant to search for the same.

If the owner of any goods or chattels unlawfully pawned, pledged, or exchanged, shall make out, either on his oath, or by the oath of any credible witness, or being a *Quaker*, by solemn affirmation, before any justice of the peace, that such owner hath had his goods unlawfully obtained from him, and that there is just cause to suspect that any person within the jurisdiction of such justice hath taken to pawn or in exchange, any goods or chattels of such owner, and without the privity or authority of such owner, and shall make appear to the satisfaction of such justice probable grounds for such suspicion, then any justice of the peace may issue his warrant for searching within the hours of business the house, warehouse, or other place of such person; and if the occupier shall, on request made to him to open the same by any peace officer authorised to search there by warrant from a justice, refuse to open the same, and permit the same to be searched, it shall be lawful for any peace officer to break open any such house, warehouse, or other place, within the hours of business, and to search as he shall think fit therein, for the goods or chattels suspected to be there, doing no wilful damage; and no pawnbroker or other person shall oppose or hinder such search; and if upon the search any of the goods or chattels which shall have been so pawned, pledged, or exchanged shall be found, and the property of the owner shall be made out to the satisfaction of such justice by the oath of one witness, or if such witness shall be a *Quaker*, by solemn affirmation, or by the confession of the person charged with such offence, such justice shall thereupon cause the goods found on such search, and pawned, pledged, or exchanged as aforesaid, to be forthwith restored to the owner. *s.* 13.

Penalty on pawnbrokers refusing to deliver up goods pawned.

If any goods or chattels shall be pawned for securing any money lent thereon, not exceeding 10*l.* and the profit thereof, and if within one year after the pawning thereof, (proof having been made on oath or affirmation by one witness, and by producing the note directed to be given before any justice to the satisfaction of such justice, of the pawning of such goods within one year, or one year and three months, as the case may be), any such pawner who was the

real owner of such goods, his executors, administrators, or assigns, shall tender unto the person who lent, on the security of the goods, his executors, administrators, or assigns, the principal money borrowed and profit, according to the rates by this act established, and the person who took such goods in pawn, his executors, administrators, or assigns, shall thereupon, without shewing reasonable cause to the satisfaction of such justice, neglect or refuse to deliver back the goods pawned for any sum not exceeding 10*l.* to the person who borrowed the money thereon, his executors, administrators, or assigns, then on oath or affirmation as aforesaid thereof made by the pawner, his executors, administrators, or assigns, or some other credible person, any justice on the application of the borrower, his executors, administrators. or assigns, is to cause such person who took such pawn, his executors, administrators, or assigns, to come before such justice, and such justice is to examine on oath or affirmation the parties themselves, and such other persons as shall appear before him; and if tender of the principal and all profit thereon shall be proved by oath or affirmation to have been made (such principal money not exceeding 10*l.*) to the lender, his executors, administrators, or assigns, by the borrower, his executors, administrators, or assigns, within the one year, or one year and three months, as the case may be, after the said pawning, then on payment by the borrower, his executors, administrators, or assigns, of such principal money, and the profit due thereon, as aforesaid, to the lender, his executors, administrators, or assigns, and in case they shall refuse to accept thereof, on tender thereof to them made by the borrower, his executors, administrators, or assigns before such justice; such justice shall thereupon, by order under his hand, direct the goods so pawned forthwith to be delivered up to the pawner, his executors, administrators, or assigns: and if the person who shall have lent any sum not exceeding in the whole 10*l.* on any goods pawned, his executors, administrators, or assigns, shall neglect or refuse to deliver up or make satisfaction for the goods so proved to the satisfaction of such justice to have been so pawned, as such justice shall direct, then such justice shall commit the party refusing to the house of correction or some other public prison, there to remain until he shall deliver up the goods or chattels so pawned, and continuing redeemable as aforesaid, according to the order of such justice, or make such satisfaction as such justice shall adjudge reasonable for the value thereof to the party entitled to the redemption. *s.* 14.

Persons producing duplicates to be deemed the owners.

Any person who shall produce any such note as aforesaid, to the person with whom the goods were pawned, as the owner, or authorised by the owner thereof, to redeem the same, shall be deemed so far as respects the person having such goods in pledge, the real owner, and the pawnbroker shall, after receiving satisfaction pursuant to this act, respecting principal and

profit, deliver such goods to the person who shall so produce the said note, and shall be indemnified for so doing, unless he shall have had previous notice from the real owner not to deliver the same to the person producing such note, or unless notice shall have been given to him that the goods pawned have been or are suspected to have been fraudulently or feloniously taken, and unless the real owner thereof proceeds in manner hereinafter provided for the redeeming of goods pledged, where such note hath been lost, mislaid, destroyed, or fraudulently obtained from the owner. *s.* 15.

Provisions in case duplicates are lost.

In case any pawnbroker shall have had such previous notice as aforesaid, or in case any such note shall be lost, mislaid, destroyed, or fraudulently obtained from the owner, and the goods shall remain unredeemed, then the pawnbroker shall, at the request of any person who shall represent himself to be the owner, deliver to such person a copy of the note so lost, mislaid, destroyed, or fraudulently obtained, with the form of an affidavit of the particular circumstances attending the case, printed or written, or in part printed and in part written on the said copy, as the same shall be stated to him by the party, for which copy of such note, and form of affidavit, in case the money lent shall not exceed 5*s.* the pawnbroker shall receive one ½*d.*; and if it shall exceed 5*s.* and not 10*s.* the pawnbroker shall receive the like sum, as he is entitled to take on giving the original note, such money to be paid by the party applying at the time of making the application; and the person having so obtained such copy of the note, and form of affidavit, shall thereupon prove his property in, or right to such goods, to the satisfaction of some justice, and shall also verify on oath or affirmation, before the said justice, the truth of the circumstances attending the case, the caption of such oath or affirmation to be authenticated by the hand writing thereto of the justice before whom the same shall be made, whereupon the pawnbroker shall suffer the person proving such property, and making such affidavit or affirmation as aforesaid, on leaving such copy of the said note, and the said affidavit or affirmation, to redeem such goods. *s.* 16.

Pawned goods may be sold at the end of the year.

All goods pawned, shall be deemed forfeited, and may be sold at the expiration of one whole year, *exclusive of the day whereon* they were pawned; and all goods so forfeited, on which any sum above 10*s.* and not exceeding 10*l.* shall have been lent, shall be sold by public auction, and not otherwise, after the expiration of the said year, but the person employed to sell, shall cause the same to be exposed to public view, and catalogues thereof to be published, containing the name and abode of the pawnbroker, and also the month such goods were received in pawn; and the number of every such pledge as entered in the book kept for that purpose, and an advertisement giving notice of such sale, and containing the name and abode of the pawn-

broker with whom the same goods were in pledge, and also the month such goods were received in pawn, to be inserted in two several days in some public newspaper, two days before the first day of sale; and the goods pledged with every pawnbroker, shall be inserted in every catalogue separate from each other, upon pain of forfeiting to the owner not exceeding 10*l.* nor less than 40*s.* *s.* 17.

Except notice be given to stay the sale for three months longer.

In case any person entitled to redeem, shall, before or upon the expiration of the said one year, from the time of pawning the same, give notice in writing, or in the presence of one witness, to the person having the same in pledge, or leave the same at his place of abode, not to sell the same within the said one year, then such goods shall not be sold until after the expiration of three calendar months to be computed from the expiration of the said year, during which term of three calendar months, the owner shall have liberty to redeem the same. *s.* 19.

Certain goods to be sold separately and at stated periods.

All pictures, prints, books, bronzes, statues, busts, carvings, in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, which shall be sold by public auction as aforesaid, shall be sold by themselves, and without other goods being sold at such sale, four times only in every year (that is to say), on the 1st *Monday* in *January*, *April*, *July* and *October*, in every year, and on the following days, if the sale shall exceed one day, and at no other time; and the person who shall be employed to sell, shall cause the same to be exposed to public view, and catalogues thereof to be published, and an advertisement, giving notice of such sale, and containing the name of the pawnbroker, to be inserted two several days in some public newspaper, three days at least before the first day of sale, upon pain of forfeiting to the owner not exceeding 5*l.* nor less than 40*s.* *s.* 18.

Account of goods sold to be entered in a book.

Every person with whom any goods shall have been pawned, shall enter into a book, a true account of the sale of all goods pawned with him, for upwards of 10*s.* which shall be sold as aforesaid, expressing the day of the month when such goods were pledged, and the name of the person pledging the same; and also the day when, and the money for which such goods were sold, together with the name and abode of the auctioneer; and in case any such goods shall be sold for more than the principal and profit due thereon, the overplus shall be paid, on demand, to the person by whom such goods were pawned, his executors, administrators, or assigns, in case such demand shall be made within three years after such sale, the costs of such sale being first deducted; and such person who pawned such goods, his executors, administrators, or assigns, shall be permitted to inspect the entry to be made of every such sale, paying for such inspection 1*d.* and in case any person shall refuse to permit such person to inspect such entry (such person, if an executor, or administrator, or assignee, producing his letters testamentary, letters of administration, or assignment), or in

case the goods were sold for more than the sum entered in such book, or if such person shall not make such entry as aforesaid, or shall not have *bona fide*, according to this act, sold the same, or shall refuse to pay such overplus, upon demand, to the pawner, or owner, his executors, administrators, or assigns, such person so offending, shall forfeit 10*l.* and treble the sum such goods shall originally have been pawned for, to the person by whom such goods were pawned, his executors, administrators, or assigns, to be levied by distress and sale, by warrant under the hands and seals of two justices of the peace. *s.* 20.

Pawnbrokers not to purchase goods in pledge.

No persons having any goods in pledge shall either by himself or any other person for him, purchase any such goods so in pledge, during the time the same shall remain in his custody as such pledge, except at such public auction as aforesaid, nor shall suffer the same to be redeemed with a view to purchase the same; nor shall such person taking any goods in pledge, make any contract with any person offering to pledge the same for the purchase, sale, or disposition of the said goods before the expiration of one whole year from the time of pawning the same.

Not to receive goods from infants under 12 nor persons in liquor.

Nor shall any pawnbroker purchase or receive any goods in pledge from any person who shall appear to be under the age of twelve years, or to be intoxicated with liquor; or purchase, or take in pawn, or exchange the note of any other pawnbroker.

Or take them in except within certain hours.

Nor buy any goods, in the course of his trade, before eight in the forenoon, or after seven in the evening, throughout the year; nor employ any servant, or apprentice, or any other person under the age of sixteen, to take in any pledge; nor receive any goods, by way of pawn, pledge, or in exchange, before eight in the forenoon, or after eight in the evening, between *Michaelmas day*, and *Lady day* following, nor before seven in the forenoon, or after nine in the evening, during the remainder of the year, excepting only until eleven of the clock on the evenings of *Saturday*, throughout the whole year, and the evenings preceding *Good Friday* and *Christmas Day*, and every fast or thanksgiving day; nor shall any person exercise the business of a pawnbroker on any *Sunday*, *Good Friday*, *Christmas Day*, or on any fast day or thanksgiving day. *s.* 21.

A table of the rates of interest and the price of duplicates to be set up in the shop.

Every pawnbroker shall cause to be painted or printed, in large characters, the rate of profit allowed by this act to be taken by him, and also the prices of the notes to be given by him, and an account of what notes are to be delivered *gratis*, and of the expence of obtaining a second note where the former has been lost, mislaid, destroyed, or fraudulently obtained, and place the same in a conspicuous part of the shop, so as to be legible by persons standing in the boxes provided for such persons coming to pawn or redeem goods. *s* 22.

Pawnbrokers to put their names up over the door of each shop.

Every pawnbroker shall cause to be painted or written in large legible characters, over the door of each shop, made use of for carrying on that trade, the christian and surname, or names

of the persons so carrying on the said trade, and the word "pawnbroker," or "pawnbrokers," following the same, upon pain of forfeiting 10*l.* for every shop made use of for one week, without such name and word, to be recovered by distress and sale, by warrant under the hands and seals of two justices of the peace (which warrant such justices are to grant), upon the confession of the party, or upon the information of any credible witness, upon oath or affirmation; and in case sufficient distress shall not be found or such penalty shall not be forthwith paid, it shall be lawful for such justices, by warrant under their hand and seals, to cause the offender to be committed to the county gaol, or house of correction, for not exceeding three calendar months, nor less than fourteen days, unless the said penalty and charges shall be sooner paid. *s.* 23.

**Selling goods before the time limited, or the same being damaged.**

If in the course of any proceedings before any justice under this act, it shall appear or be proved to the satisfaction of the justice upon oath, or affirmation, that any of the goods pawned as aforesaid have been sold before the time allowed by this act, or otherwise than according to the directions of this act, or have been embezzled or lost or have been rendered of less value than at the time of pawning, by the default, neglect, or wilful misbehaviour of the person with whom the same were pledged, his executors, administrators, or assigns, agents, or servants, then it shall be lawful for such justice to award a reasonable satisfaction to the owner, and the sum so awarded, in case the same shall not amount to the principal and profit, shall be deducted out of the said principal and profit; and in all cases where the goods pawned shall have been damaged, it shall be sufficient for the pawner to pay or tender the money due upon the balance, after deducting such reasonable satisfaction as any such justice shall award; and upon so doing the justice shall proceed as if the pawner had paid or tendered the whole money due for principal and profit; and if the satisfaction to be awarded to the owner, shall be equal to, or exceed the principal and profit, then the person to whom the same were pledged, shall deliver the goods to the owner, without being paid any thing for principal or profit, and shall also pay such excess (if any) to the person entitled, under the penalty of 10*l.* to be recovered and applied in manner hereinafter mentioned. *s.* 24.

**Books to be produced.**

It shall be lawful for any justice, upon complaint on the oath or affirmation of one witness, wherein any information shall be laid against any pawnbroker for having offended against this act, or respecting any dispute between any pawnbroker and person having pawned goods, or the owner, or respecting any felony, or other matter, or on any other occasion whatsoever, which in the judgment of any justice, shall make the production of any book, note, voucher, memorandum, duplicate, or other paper necessary, which shall, or ought to be in the hands of any pawnbroker, to summon such pawnbroker

before him, to attend with such book, note, voucher, memorandum, duplicate, or paper, which he is to produce before such justice in the state the same was made at the time the pawn was received, without any alteration, erasement, or obliteration; and in case such pawnbroker shall neglect or refuse to attend, or to produce the same, such pawnbroker shall, if he do not show good cause, to the satisfaction of such justice, forfeit not exceeding 10*l.* nor less than 5*l.* to be levied and applied in manner herein after mentioned. *s.* 25.

Penalties on pawnbrokers offending.

In case any pawnbroker shall in any wise offend against this act, such pawnbroker shall, for every such offence, in neglecting to make, in such books as aforesaid, any entry required by this act, forfeit such sum as to the justice shall seem reasonable, not exceeding 10*l.*; and for every other offence against this act, where no forfeiture is imposed on any particular offence against any part of this act, not less than 40*s.* nor more than 10*l.*; and all forfeitures incurred by any offence committed against this act, shall be levied by distress and sale, by warrant under the hand and seal of any justice of the peace; and the justice shall award one moiety of the said penalties to the parties complaining, and the remainder, not otherwise disposed of by this act, to the use of the poor, to be paid to the overseers for that purpose. *s.* 26.

Provided information be given within 12 months.

No pawnbroker shall be subject to any prosecution before any justice by virtue of this act, for any offence, unless information shall be given within twelve calendar months next after the offence committed; and every such information shall be prosecuted before such justice of the peace as shall act near to the place where such offence shall have been committed, unless the same shall have been committed within the city or liberties of *London*. *s.*27.

Churchwardens and overseers to prosecute.

The churchwardens and overseers of the poor, or some or one of such officers, at the discretion or direction of any justice, on having notice from such justice of such offence, shall prosecute every offender for every offence, suggested by such justice to have been committed against this act, at the expence of the parish whereof they are such officers. *s.* 28.

Convicted persons not to prosecute.

No person who has been convicted of any fraud, or of obtaining money under false pretences, or of any felony whatsoever, shall be allowed to prosecute or inform against any person, for any offence against this act. *s.* 29.

Act not to extend to persons lending money at 5*l.* per cent.

Nothing in this act shall extend to persons who shall lend money upon pawn, at the rate of 5*l.* *per cent. per ann.* interest without taking any further profit, on any pretence whatsoever. *s.* 30.

Act to extend to executors of pawnbrokers.

All the provisions, contained in this act, shall extend to the executors, administrators, and assigns, of every deceased pawnbroker, except that no such executor or administrator shall be answerable for any penalty personally, or to be paid out of his own monies, unless incurred by his own act or neglect. *s.* 31.

In all actions, suits, informations, trials, and other proceedings, any inhabitants of the parish in which any offence shall be committed, shall be admitted to give evidence. *s.* 33. Inhabitants of parishes may be witnesses.

The justice before whom any person shall be convicted by this act, shall cause such conviction to be drawn up in the form following (that is to say): Form of conviction.

——— to wit } *Be it remembered, That on this* ——— *day of* ——— *in the* ——— *year of his majesty's reign,* A B *is convicted before* ——— *of his majesty's justices of the peace for the said county of* ——— [or *for the* ——— *riding or division of the said county of* ——— or *for the city, liberty, or town of* ——— as the case shall happen to be] *for* ——— *and the said* ——— *do adjudge him* [or *her*] *to pay and forfeit for the same the sum of* ——— *Given under* ——— *the* ——— *day and year aforesaid.*

And the said justice shall cause the same so drawn up, to be fairly written upon parchment, and transmitted to the next general or general quarter sessions, to be filed amongst the records; and in case any person shall appeal from the judgment of the said justices to the general or quarter sessions, the justices in such sessions are, upon receiving the said conviction drawn up in the form aforesaid, to proceed to the hearing of the said appeal at such next sessions, *and not afterwards*, and no *certiorari* shall be granted to remove any conviction or other proceedings. *s.* 34.

If any person convicted of any offence punishable by this act, shall think himself aggrieved by the judgment of the justice, such person shall have liberty to appeal to the justices at the next general or quarter sessions of the peace, and the execution of the said judgment shall in such case be suspended, the person convicted, entering into a recognizance at the time of conviction, with two sureties, in double the sum adjudged, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices in their said next general or quarter sessions, and to pay such costs as the justices in such sessions shall award, which recognizance the said justice shall take; and the justices, in the said general or quarter sessions, are to hear and finally determine the matter of appeal, and to award such costs as to them shall appear just, to be paid by either party; and if upon the hearing, the judgment of the justice shall be affirmed, such apppellant shall immediately pay the sum adjudged together with such costs as the justices shall award for such appeal, or in default of making such payment, shall suffer the pains by this act inflicted upon persons who shall neglect to pay, or shall not pay the Power to appeal.

sums imposed upon persons convicted by virtue of this act. *s.* 35.

*Peace.* See SURETY.

*Pease, stealing of.* See TRESPASS.

*Pedlars.* See HAWKERS.

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# PEERS.

Peers of the realm.

PEERS of the realm are the nobility of the kingdom, and lords of parliament; who are divided into dukes, marquises, earls, viscounts, and barons; and the reason why they are called *peers*, is, for that notwithstanding there be a distinction of dignities in our nobility, yet in all public actions they are equal; as in their votes of parliament, and in passing upon the trial of any nobleman. *Staund. P. C.* b. 3.

Trial of.

And all the peers of parliament shall be tried for treason or felony, or misprision thereof, by their peers. 2 *Hawk.* c. 24. *s.* 13.

But for all other crimes out of parliament, as *præmunire*, riot, seduction, or the like, they are to be tried by the country. 2 *Hawk.* c. 44. *s.* 14.

Also it hath been adjudged that they shall not be so tried upon an appeal of felony, for that this privilege is to be intended only as to the suit of the king, and not of the suit of the subject. 2 *Hawk.* c. 44. *s.* 14.

Neither are they privileged from being indicted by a grand jury of commoners, either in the *King's Bench*, or before commissioners of *Oyer*, or the coroner. 2 *Hawk.* c. 44. *s.* 15.

And therefore in an indictment for treason or felony, trespass *vi et armis*, assault or riot, process of outlawry shall issue against a peer of the realm, if he absent himself, and cannot be found. 2 *Hale's Hist.* 199. 2 *Hawk.* c. 44. *s.* 16.

And if a peer be attainted of treason or felony, he may be brought before the court of *King's Bench*, and demanded what he has to say, why execution should not be awarded against him?* and if he plead any matter to such demand his plea shall be discussed, and execution awarded by the said court, upon its being adjudged against him. 2 *Hawk.* c. 44. *s.* 18.

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*See title EXECUTION and REPRIEVE.

This privilege extends only to the peers of *Great Britain*,* so that a nobleman of any other country, or a lord of *Ireland*, hath not any other privileges in this kingdom than a common person; also the son and heir apparent of a nobleman is not entitled to the privilege of being tried by his peers, which is confined to such persons as are lords of parliament at the time. *Co. Lit.* 156. 2 *Inst.* 48. 3 *Inst.* 30.

This privilege of being tried by peers is said not to extend to bishops, who, though they are lords of parliament, and sit there by virtue of their baronies, which they hold in right of the church, yet are not ennobled in blood, and consequently not peers with the nobility. 3 *Inst.* 30, 31. 1 *Black. Com.* 401.

Peeresses either in their own right or by marriage, shall be tried before the same judicature as other peers of the realm: and if a woman noble in her own right, marries a commoner, she still remains noble, and shall be tried by her peers: but if she be only noble by marriage, then, by a second marriage with a commoner, she loses her dignity; for as by marriage it is gained, by marriage it is also lost; yet if a duchess dowager marries a baron, she continues a duchess still, for all the nobility are *peers*, and therefore it is no degradation. 1 *Black. Com.* 401, 402.

A peer, or peeress, either in her own right or by marriage, cannot, as has been before shewn under a former title,† be arrested in civil cases.

Not to be arrested unless for criminal matters.

But this privilege doth not extend to high treason, felony, breach (or surety of the peace), or any indictable offence whatsoever. 4 *Inst.* 25. 1 *Black. Com.* 166.

However the safest way of proceeding against a peer for sureties of the peace or good behaviour, is by complaint to the court of *Chancery* or *King's Bench*. 1 *Hawk. c.* 60. *s.* 5.

For a peer or peeress cannot be bound over in any other place than the courts of *King's Bench* or *Chancery*. 4 *Black. Com.* 253, 254.

A peer sitting in judgment, gives not his verdict upon oath, but upon his honour: he answers also to bills in *Chancery*, upon his honour, and not upon his oath; but *when he is examined as a witness either in civil or criminal cases, he must be sworn*; for the respect which the law shews to the honour of a peer does not extend so far as to overturn the settled maxim,

In what cases to be sworn.

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*Among which the peers of *Scotland* and of *Ireland* are now included; for by the articles of the Union, the elected peers shall have all the privileges of the peers of parliament of *Great Britain*: also all the rest of the peers of *Scotland* and *Ireland* shall have all the privileges of the peerage of *England*, excepting only that of sitting and voting in parliament.

† Under title PARLIAMENT, div. *privilege of parliament*.

that *in judicial proceedings no evidence can be received, unless the witness be sworn.* *Salkeld*, 413. 1 *Black. Com.* 402.

For the manner in which the benefit of clergy is allowable to peers, see vol. ii. p. 437.

For the punishment of persons guilty of the offence called by the particular name of *scandalum magnatum*, see *stat.* 2 *Ric.* 2. *st.* 1. *c.* 5, under title *SEDITIOUS PRACTICES.*

*Penal statutes.* See FORFEITURES ON PENAL STATUTES.

*Penitentiary Houses.* See GAOLS.

*Pensions.* Duty on. See TAXES.

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# PERJURY.

Perjury.

PERJURY by the common law seems to be 'a wilful false 'oath, by one who being lawfully required to depose the truth 'in any proceeding in a court of justice, swears wilfully, abso'lutely, and falsely, in a matter of some consequence to the 'point in question,' whether he be believed or not. 1 *Hawk.* *c.* 69. *s.* 1. 3 *Inst.* 163.

Subornation.

SUBORNATION of perjury by the common law seems to be an offence in 'procuring a man to take a false oath, amounting 'to perjury, who actually takes such oath;' but it seemeth clear, that if the person incited to take such an oath do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet it is certain, that he is liable to be punished, not only by fine, but also by infamous corporal punishment. 1 *Hawk.* *c.* 69. *s.* 10.

For the better understanding the nature of perjury, it will be proper to consider,

*I. What shall be deemed perjury.*

*II. How the offence is punishable.*

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### I. *What shall be deemed perjury.*

Must be wilful.

It is necessary to constitute the offence of perjury, that the

false oath be taken with some degree of deliberation; for if upon the whole circumstances of the case it shall appear probable, that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprize, or inadvertency, or a mistake of the true state of the question, it cannot amount to voluntary and corrupt perjury. 5 *Mod. Rep.* 350. 10 *Mod. Rep.* 195. *Salk.* 513. 3 *Inst.* 163.

In what kind of proceedings it may be committed.

It seems to be clearly agreed, that all such false oaths, as are taken before those who are any ways intrusted with the administration of public justice, in relation to any matter before them in debate, are properly perjuries. 1 *Hawk.* c. 69. s. 3.

And it seems to have been holden by some, that all such false oaths as are taken before persons authorised by the king to examine witnesses in relation to any matter whatsoever, wherein his honour or interest are concerned, are also punishable as perjuries. 1 *Hawk.* c. 69. s. 3.

Therefore it hath been holden, that not only such persons are indictable for perjury, who take a false oath in a court of record, upon an issue therein joined, but also all those who forswear themselves in a matter judicially depending before any court of equity, or spiritual court, or any other lawful court, whether the proceedings therein be of record or not, or whether they concern the interest of the king or subject. 1 *Hawk.* c. 69. s. 3.

And it is said to be no way material, whether such false oath be taken in the face of a court, or persons authorised by it to examine a matter, the knowledge whereof is necessary for the right determination of a cause; and therefore a false oath before a sheriff, upon a writ of enquiry of damages, is as much punishable as if it were taken before the court on a trial of the cause. 1 *Hawk.* c. 69. s. 3.

Also it seemeth, that any false oath is punishable as perjury, which tends to mislead the court in any of their proceedings, relating to a matter judicially before them, though it no way affect the principal judgment which is to be given in the cause; as where a person who offers himself to be bail for another, knowingly and wilfully swears that his substance is greater than it is. 1 *Hawk.* c. 69. s. 3.

Also it hath been resolved, that not only such oaths as are taken upon judicial proceedings, but also such as any way tend to abuse the administration of justice, are properly perjuries; as where one takes a *false oath before a justice of the peace*, in order to induce him to compel another to find sureties for the peace, or the like. 1 *Hawk.* c. 69. s. 3.

But it seemeth certain, that no oath whatsoever in a mere private matter, howsoever wilful or malicious it may be, is punishable as perjury in a criminal prosecution, for private injuries are left to be redressed by private actions; and upon this

ground it hath been holden, that if a man makes a bargain for any thing, and *voluntarily swears* the thing to be his own, or that he has good title to it, though it be false, yet it is not perjury for which he may be indicted, because it is not done in a judicial proceeding. 1 *Hawk. c.* 69. *s.* 3. 3 *Rol. Abr.* 257. 16 *Viner's Abr.* 307.

It also appears that the notion of perjury is confined to such public oaths only, as affirm or deny some matter of fact, contrary to the knowledge of the party; and therefore that it doth not extend to any *promissory oaths* whatsoever; from which it clearly follows, that *no justice of peace, or constable or other officer* who is sworn to execute his office duly, and who neglects to execute his office in pursuance of his oath, or acts contrary to the purport of it, is indictable for perjury in respect of such oath; yet it is certain that his offence is highly aggravated by being contrary to his oath, and therefore he is liable to the severer fine on that account. 3 *Rol. Abr.* 257. 3 *Inst.* 166. 16 *Viner's Abr.* 337. 1 *Hawk. c.* 69. *s.* 3.

In what cases an oath may be administered.

No oath whatsoever taken before persons acting merely in a private capacity, or before those who take upon them to administer oaths of a public nature, without legal authority for their so doing, or before those who are legally authorized to administer some kinds of oaths, but not those which happen to be taken before them, or even before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth unwarranted and merely void, can ever amount to perjury. 1 *Hawk. c.* 69. *s.* 4.

For the law takes no notice of any perjury but such as is committed in some court of justice, having power to administer an oath; or before some magistrate or proper officer invested with a similar authority, in some proceedings relative to a civil suit or a criminal prosecution; for it esteems all other oaths unnecessary at least, and therefore will not punish the breach of them; for which reason it is much to be questioned, how far any magistrate is *justifiable* in taking *a voluntary affidavit* in any extrajudicial matter, as is now too frequent upon every petty occasion: since it is more than possible, that by such idle oaths a man may frequently *in foro conscientiæ* incur the guilt, and at the same time evade the temporal penalties of perjury. 4 *Black. Com.* 137.

However, it hath been adjudged that a false oath taken before commissioners, whose commission at the time is in strictness determined by the demise of the king, is perjury, if the oath was taken before such time as the commissioners had notice of such demise; for whatever is done under the commission before such notice, must for the necessity of the case stand good. 1 *Hawk. c.* 69. *s.* 4.

In what kind of oaths perjury may be committed.

It seemeth clear, that a man may be in danger of being guilty of perjury, not only in respect of a false oath taken by him as a witness for another, but also in respect of a false oath taken

by him in his own cause, either in an answer to questions put to him in a court of law or equity, having power to purge him upon oath concerning his knowledge of the matters in dispute, or in his affidavit concerning some collateral matter, wherein the parties own oaths are allowed to be taken. 1 *Hawk.* c. 69. s. 5.

But it seems that a juror who gives a verdict contrary to manifest evidence, is not properly guilty of perjury within the above-mentioned description, because he is not sworn to depose the truth, but only to give a true judgment upon the deposition of others *. 1 *Hawk.* c. 69. s. 5.

How far the oath must be false.

It is said not to be material whether the fact which is sworn, be in itself true or false; for howsoever the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by him who swears to it, his offence is altogether as great as if it had been false, inasmuch as he wilfully swears that he knows a thing to be true, which at the same time he knows nothing of, and impudently endeavours to induce those before whom he swears to proceed upon the credit of a deposition, which any stranger might make as well as he. 1 *Hawk.* c. 69. s. 6.

How far the oath must be absolute.

It is laid down by *Coke* and *Hawkins* generally, that no oath shall amount to perjury unless it be sworn absolutely and directly; and therefore that he who swears a thing according as he thinks, remembers, or believes, cannot in respect of such an oath be found guilty of perjury. 3 *Inst.* 166. 1 *Hawk.* c. 69. s. 7.

But in two modern cases, one in the court of *Common Pleas*, and the other in the court of *King's Bench*, it was said to be a mistaken notion, that a person could not be convicted of perjury for deposing on oath according to his belief; and that if a man swears that *he believes* a fact to be true, *which he must know to be false*, he may be indicted for perjury. 3 *Wils. Rep.* 427. 2 *Black. Rep.* 881. *Leach's Cr. L.* 304.

How far the point ought to be material.

It seemeth clear that the thing sworn ought to be some way material to the point in question; for if it be wholly foreign from the purpose, or altogether immaterial, and neither any way pertinent to the matter in question, nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give credit to the substantial part of the evidence, it cannot amount to perjury, because it is wholly idle and insignificant; as where a witness introduces his evidence with an impertinent preamble of a story concerning previous facts, no way relating to what is material, and is guilty of a falsity as to such facts. 1 *Hawk.* c. 69. s. 8.

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* For the punishment to which they are subject for giving a false verdict, see title Jurors.

Also it hath been adjudged, that where a witness being asked by a judge whether *A* brought a certain number of sheep from one town to another all together? answered that he did so; when in truth *A* did not bring them all together, but part at one time, and part at another; yet such witness was not guilty of perjury, because the substance of the question was, whether *A* did bring them at all or not, and the manner of bringing them was only a circumstance. 1 *Hawk. c.* 69. *s.* 8.

And upon the same ground it is said to have been adjudged, that where a witness being asked, whether such a sum of money were paid for two things in controversy between the parties, answered that it was, when in truth it was paid only for one of them by agreement, such witness ought not to be punished for perjury; because, as the case was, it was no way material whether it were paid for one or both. 1 *Hawk. c.* 69. *s.* 8.

Also it is said to have been resolved, that a witness who swore that one drew his dagger and beat and wounded *J S*, when in truth he beat him with a staff, was not guilty of perjury, because the beating only was material. 1 *Hawk. c.* 69. *s.* 8.

But it seems a reasonable opinion that a witness may be guilty of perjury in respect to a false oath concerning a mere circumstance, if such oath have a plain tendency to corroborate the more essential part of the evidence; as if in trespass for spoiling the plaintiff's close, with the defendant's sheep, a witness swears that he saw such a number of the defendant's sheep in the close, and being asked how he knew them to be the defendant's, swears that he knew them by such a mark, which he knew to be the defendant's, when in truth the defendant never used any such mark; for he giving such a special reason for his remembrance, could not but make his testimony more credible than it would have been without it. 1 *Hawk. c.* 69. *s.* 8.

And it is not necessary that it appear to what degree the point in which a man is perjured was material to the issue; for if it is but circumstantially material it will be perjury. 1 *Ld. Raym.* 258.

Much less is it necessary that the evidence be sufficient for the plaintiff to recover upon; for in the nature of the thing an evidence may be very material, and yet it may not be full enough to prove directly the point in question. 2 *Ld. Raym.* 889.

But it is necessary to aver in the indictment that the particular question became and was a material question, and if it wants this allegation it will be a decisive objection. 1 *Ld. Raym.* 257. 2 *Ld. Raym.* 889. *Holt.* 535. 1 *Term Rep.* 67, 68. 5 *Term Rep.* 318.

And it is incumbent on the prosecutor to prove the *materiality* of the perjury. *Old Bai.* 1784. 305.

It hath been holden not to be material upon an indictment of perjury at common law, whether the false oath were at all credited, or whether the party in whose prejudice it was intended were in the event any way aggrieved by it or not, inasmuch as this is not a prosecution grounded on the damage to the party, but on the abuse of public justice. 1 *Hawk. c.* 69. *s.* 9. How far the oath ought to be credited.

But on the trial the oath will be taken as true, until it be disproved; and therefore to convict a man of perjury, a probable credible witness is not enough, for the evidence must be strong, clear, and more numerous on the part of the prosecution, than the evidence on the other side; therefore the law will not permit a man to be convicted of perjury, unless there are two witnesses. *Old Bai. Sess.* 1786. *p.* 812. 10 *Mod. Rep.* 195. 1 *Ld. Raym.* 396.

## *II. How the offence is punishable.*

It seems to be settled, that *justices of peace have no jurisdiction over perjury at the common law**, for as the chief end of the institution of the office of these justices was for the preservation of the peace against *personal* wrongs and *open violence*; and the word *trespass* in the commission, in its most proper and natural sense is taken for such kind of injuries, it shall be understood in that sense only, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace. 2 *Hawk. c.* 8. *s.* 38. Justices of peace have no jurisdiction at common law as to perjury.

The punishment of perjury and subornation at common law has been various: it was anciently death; afterwards banishment or cutting out of the tongue; then forfeiture of goods; and now it is fine and imprisonment, and never more to be capable of bearing testimony †. 3 *Inst.* 163. 4 *Black. Com.* 138. Punishment at common law.

And it seems to be a good cause of challenge to a juror that he hath been convicted of perjury. 2 *Hawk. c.* 43. *s.* 25. Not to be a juror.

But by 5 *Eliz. c.* 9, *made perpetual by* 29 Eliz. *c.* 5. *and* 21 Jac. 1. *c.* 28, all *persons which shall corruptly procure any witness* by letters, rewards, promises, or other sinister means, to commit wilful and corrupt perjury, in any matter depending in suit, by writ, action, bill, complaint, or information, concerning lands and hereditaments, goods, debts, or damages, in any of the queen's courts of record, or any leet, ancient demesne court, hundred court baron, or in the courts of the stannary in *Devon* and *Cornwall*, or shall corruptly procure or suborn any By statute.

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* But by statute they have, see 5 *Eliz.* c. 9. s. 10, infra.

† For the operation of a pardon in respect of persons convicted of perjury, see p. 553, supra.

witness sworn to testify *in perpetuam rei memoriam;* such offenders shall, being convicted, forfeit 40*l.* *s.* 3.

And if such offender have not goods or lands to the value of 40*l.* he shall suffer imprisonment one half year and stand upon the pillory one hour in some market town adjoining, in open market there. *s.* 4.

And no person so convicted shall be received as a witness in any court of record, until the judgment given against the said person be reversed. And upon every such reversal the parties grieved shall recover their damages, against such as did procure the said judgment to be first given against them, by action upon the case. *s.* 5.

And if any person shall, either by subornation, unlawful procurement or means of any other, or by their own act, wilfully and corruptly *commit wilful perjury,* in any of the courts before mentioned, or being examined, *ad perpetuam rei memoriam,* every person so offending, and being convicted, shall forfeit 20*l.* and have imprisonment six months, and the oath of such person shall not be received in any court of record, until the judgment be reversed by attaint or otherwise. And upon such reversal the party grieved to recover their damages, against such as did procure the judgment to be given against them, by action on the case. *s.* 6.

And if the offender have not goods to the value of 20*l.* he shall be set on the pillory in some market place, by the sheriff, if without any city, or town corporate, and if within such city, *&c.* by the head officer, *&c.* and there have both his ears nailed, and be disabled for ever to be sworn in any of the courts of record aforesaid, until the judgment be reversed, and thereupon recover his damages. *s.* 7.

And the one moiety of the money forfeited to be to the queen, and the other moiety to such person grieved by reason of the offence, that will sue for the same. *s.* 8.

As well the judges of the said courts where such perjury shall be committed, as also the justices of assize and gaol delivery, *and the justices of peace at their quarter sessions** shall have power to inquire of all offences contrary to this act, by inquisition, presentment, bill or information, or otherwise lawfully to hear and determine the same. *s.* 9.

Also the justices of assize shall in every county two times in the year, in their sittings, make proclamation of this statute. *s.* 10.

This act shall not extend to any ecclesiastical court, but such offenders may be punished by such laws as heretofore in the ecclesiastical courts. *s.* 11.

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* And *Dalton* says that one justice may bind the offender over to the sessions. *Dalton, c.* 70.

Also this statute shall not restrain the authority of any judge having absolute power to punish perjury before the making thereof, but every such judge may proceed in the punishment of all offences punishable before the making of the said statute, in such wise as they might have done, and used to do, to all purposes, so that they set not upon the offender less punishment than is contained in the said act *. *s.* 13.

And by 2 *Geo.* 2. *c.* 25. made perpetual by 9 *Geo.* 2. *c.* 18, besides the punishment already to be inflicted by law for so great crimes, it shall be lawful for the court or judge, before whom any person shall be convicted of wilful and corrupt perjury or subornation of perjury according to the laws now in being, to order such person *to be sent to some house of correction within the same county, for a time not exceeding seven years, and there to be kept to hard labour during all the said time;* or otherwise, *to be transported for a term not exceeding seven years,* as the court shall think most proper; and if any person so committed or transported, shall voluntarily escape or break prison, or return from transportation before the expiration of the term, every such person thereof convicted shall suffer death as a felon, without benefit of clergy †. *s.* 2.

And the better to prevent great offenders from escaping punishment, by 23 *Geo.* 2. *c.* 11, it shall be lawful for any of his majesty's justices of assize, or *nisi prius*, or general gaol delivery, or of any of the great sessions of *Wales*, or of the counties The court may order perjured witnesses to be prosecuted.

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* From the above clause it seemeth undoubtedly to follow that the court of *King's Bench*, proceeding upon an indictment or information of perjury or subornation of perjury at common law, may not only set a discretionary fine on the offender, but also condemn him to the pillory, without making any inquiry concerning the value of his land or goods. 1 *Hawk. c.* 69. *s.* 16.

† It is also enacted by 12 *Geo.* 1. *c.* 29, that if any person who shall be convicted of wilful and corrupt perjury, or subornation of perjury, shall act or practise as an attorney or solicitor, or agent in any suit or action in any court of law or equity, the court shall, upon complaint or information thereof, examine the matter in a summary way in open court; and if it appear to the satisfaction of the court that the party hath offended contrary to this act, such court shall cause the offender to be transported for seven years. *s.* 4.

And by 31 *Geo.* 2. *c.* 10, whosoever shall willingly and knowingly take a false oath, or procure any person to take a false oath, to obtain the probate of any will, or to obtain letters of administration in order to receive any wages, pay, or other allowances of money or prize money, due, or supposed to be due to any officer, seaman, or other person entitled, or supposed to be entitled thereto, for service done on board of any ship or vessel of his majesty, or the executor, administrator, wife, relation, or creditor of any such officer or seaman, or other person who has really served, or was supposed to have served on board any ship or vessel of his majesty, shall be deemed guilty of felony, and suffer death without benefit of clergy.

palatine, sitting the court or within twenty-four hours after, to direct any person examined as a witness upon any trial before him or them, to be prosecuted for the said offence of perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and that it is proper so to do; and to assign the party injured, or other person undertaking such prosecution, counsel, who shall do their duty without a fee or reward: and such prosecution so directed, shall be carried on without any duty or fees whatsoever; and the clerk of assize or other proper officer of the court shall give *gratis* to the party injured, or prosecutor, a certificate of the same being directed; together with the names of the counsel assigned him, which certificate shall be sufficient proof of such prosecutions; provided that no such direction or certificate shall be given in evidence on the trial. *s.* 3.

And in order to render prosecutions for perjury less difficult, it is also enacted by the same statute 23 *Geo.* 2. *c.* 11, that in every information or indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged, and by what court, or before whom the oath was taken (averring such court or person to have authority to administer the same), together with the proper averment to falsify the matter wherein the perjury is assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding; and without setting forth the commission or authority of the court or person before whom the perjury was committed. *s.* 1.

And in every information or indictment for subornation of perjury, or for corrupt bargaining with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, and without setting forth the commission or authority of the court or person before whom the perjury was committed, or agreed to be committed. *s.* 2.

And it is enacted by 8 *Geo.* 1. *c.* 6, that if any person making such affirmation or declaration, as is appointed by that act (see title "*Quakers*") shall be lawfully convicted of wilful, false, and corrupt affirming or declaring any matter or thing, which if sworn in the common or usual form would have amounted to wilful and corrupt perjury, every person so offending shall incur and suffer such and the same pains, penalties and forfeitures as are inflicted or enacted by the laws against persons convicted of wilful and corrupt perjury. *s.* 2.

In the construction of the statute 5 *Eliz.* *c.* 9, the following points seem to have been holden:

The words of the statute to be pursued.

1. That every indictment or action on this statute must exactly pursue the words of it, and therefore if it allege that the

defendant deposed such a matter *falsely and deceitfully*, or *falsely and corruptly*, without saying *wilfully and corruptly*, it is not good, and that such a defect cannot be supplied by adding the words *against the form of the statute*, or concluding *and so a wilful and corrupt perjury did commit*. 1 *Hawk. c.* 69. *s.* 17.

But it hath been resolved, that it is not necessary to shew whether the party who is accused of perjury did take the false oath through the subornation of another, or without any such subornation, though the words of the statute are *if persons by subornation, &c. or their own act, &c. shall commit wilful perjury*; for there being no medium between the branches of this distinction, they seem to be put in, out of abundant caution, and to express no more than the law would have implied, and therefore operate nothing. 1 *Hawk. c.* 96. *s.* 18.

In what kind of oaths perjury may be committed.

2. It hath been adjudged, that a man cannot be guilty of perjury within this statute, in any case wherein he may not possibly be guilty of subornation of perjury within it; for it is reasonable to give the whole statute the same construction, neither can it be well intended that the makers of the statute meant to extend its purview further as to perjury, which they seem to esteem the lesser crime, than subornation of perjury, which they seem to esteem the greater; and therefore since the clause concerning the subornation of perjury, mentioning only matters depending by *writ, bill, plaint or information, concerning hereditaments, goods, debts, or damages*, extends not to perjury on an indictment or criminal information, the clause concerning perjury, though penned in more general words, hath been adjudged to come under the like restrictions. 1 *Hawk. c.* 69. *s.* 19.

Also since the clause concerning subornation of perjury relates only to perjury by witnesses, that concerning perjury shall extend only to the like perjury; and therefore not to perjury in an answer in chancery; or in swearing the peace against a man; or in any presentment by a homager in a court baron; or in a wager of law, or in swearing before commissioners of inquiry of the king's title to land. 1 *Hawk. c.* 69. *s.* 20.

And by the opinions of some, a false affidavit against a man in a court of justice is not within this statute; but if such affidavit be by a third person, and relate to a cause depending in suit before the courts, and either of the parties in variance be grieved, hindered, or molested in respect of such cause, by reason of the perjury, it may strongly be argued, that it is within the purview of the statute.* 1 *Hawk. c.* 69. *s.* 21.

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* In the case of the *King* v. *Thorogood*, *Tr.* 9 *Geo.* 1, the defendant made an affidavit in the *Common Pleas*, and confessed it was false; the

Also it seems the better opinion that a false oath before the sheriff on a writ of enquiry of damages is within the statute. 1 *Hawk. s.* 62. *s.* 21.

How far the oaths may be prejudicial.

3. It hath been collected from the clause which giveth an action to the party grieved, that no false oath is within the statute, which doth not give some person a just cause of complaint: and therefore that if the thing sworn be true, though it be not known by him that swears it to be so, the oath is not within the statute, because it gives no just cause of complaint to the other party, who would take advantage of another's want of evidence to prove the truth. 1 *Hawk. c.* 69. *s.* 22.

Also from the same ground no false oath can be within the statute, unless the party against whom it was sworn suffered some disadvantage by it: but it seems that a perjury which tends only to aggravate or extenuate the damages, is as much within the statute as a perjury that goes directly to the point in issue; and a perjury, in a cause wherein an erroneous judgment is given, is a good ground of a prosecution upon the statute till the judgment be reversed. 1 *Hawk. c.* 69. *s.* 23.

Prosecutions seldom upon the statute.

But as every man is still punishable by indictment or information at common law, where he takes a false oath which is looked on as perjury at the common law, and as a prosecution upon the statute is more difficult than by indictment at the common law, it seems to be most advisable to prosecute such an offender at the common law, and not upon the statute; and this now is the usual course of proceeding. See 1 *Hawk. c.* 69. *s.* 21. 1 *Black. Com.* 138. *Dalton, c.* 70.

Court will not quash an indictment for perjury.

Although by the common law the court may in discretion quash any indictment for any such insufficiency as would make any judgment whatsoever, given upon any part of it, erroneous; yet it seems that the judges are in no case bound of right to quash an indictment, but may oblige the defendant either to plead or demur to it, and this they generally do, where it is for a crime of an enormous or public nature, as perjury and the like. 1 *Hawk. c.* 25. *s.* 136.

Certiorari.

It seems also that the court will not ordinarily at the prayer of the defendant, grant a *certiorari* for the removal of an indictment of perjury: for such crime deserves all possible discountenance, and the *certiorari* might delay, if not wholly discourage the prosecution. 2 *Hawk. c.* 27. *s.* 28.

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court recorded his confession, and sentenced him to the pillory. It was objected that this court had no jurisdiction, and that he ought to be brought before the court by indictment; but these objections were over-ruled, because any court may punish an offence committed in *facie curiæ*, under the act 5 *Eliz. c.* 9. (see *s.* 13 thereof, in p. 643 supra) 8 *Mod. Rep.* 129.

And the court of *Chancery* hath refused permission to amend an answer where an indictment for perjury had only been threatened, even though the party having no interest, could not be supposed to make the false oath intentionally; for it is the province of the grand jury to judge of the intention, and what the grand jury may find, the court will never expunge. *Brown Cas. Chan.* 419. *Cas. K. B. temp. Ld. Hard.* 203. 1 *Hawk. 8vo. ed. n.* 8.

*Perry.* See EXCISE.

*Personating others.* See FELONY (without Clergy, § *Forgeries*).

*Petition* Tumultuous. See RIOTS.

*Petit Constable.* See CONSTABLE.

*Petit Larceny.* See FELONY.

*Petit Treason.* See HOMICIDE.

*Pewter.* Manufacturing of. See MANUFACTURES.

—— Buying stolen. See FELONY (within Clergy, § *Buyers and Receivers of stolen Goods*).

*Pheasants.* See GAME.

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# PHYSICIANS, APOTHECARIES AND SURGEONS.

BY 3 *Jac.* 1. c. 5, no recusant convict shall practise physic, nor use the trade of an apothecary, on pain of 100*l.* *s.* 8. Recusant convict not to practise.

By 32 *Hen.* 8. *c.* 40, the president, commons, and fellows of the college of physicians of *London*, may yearly elect four of the said commons and fellows, who, after oath ministered by the president, or his deputy, shall have power to enter the house of every apothecary within the city, to search apothecary wares there, and all such drugs as the same four persons shall find defective, the same four persons calling to them *the wardens* Searching for defective wares in *London.*

*of the mystery of apothecaries, or one of them*, (who may go with the physicians in their search, 1 *Mar. st.* 2. *c.* 9. *s.* 5.) shall cause to be burnt or otherwise destroy the same. *s.* 2.

And an apothecary refusing entrance for such purpose, forfeits 10*l.* for each offence. 1 *Mar. st.* 2. *c.* 9. *s.* 5.

And all *justices, mayors, sheriffs, constables, and other officers*, upon request, shall assist the president of the said college and all persons by them authorized for the due execution of the said statutes, upon pain to run in contempt of the crown. *s.* 6.

Physicians exempt from offices.

By 32 *Hen* 8. *c.* 40, all members of the college of physicians in *London*, shall be discharged of keeping watch or ward in the said city and suburbs thereof, nor shall any of them be chosen constable or other officer within the said city or suburbs, and every such election shall be void.

But it seems to have been holden, that the equity of this act doth not extend to other physicians not mentioned in it; perhaps for this reason, because the physicians have no such special custom for their discharge as surgeons are said to have.* 2 *Hawk.* c. 10. *s.* 44.

However, if such a practising physician be chosen constable of a town, which has sufficient persons besides to execute this office, and there is no special custom concerning it in respect of his lands in such town, perhaps he may be relieved by the *King's Bench*. 2 *Hawk. c.* 10. *s.* 41.

But if he be chosen in pursuance of such custom, he has no remedy for his discharge, there being no precedents of this kind, and his calling being private. 2 *Hawk.* c. 10. *s.* 41.

Apothecaries exempt from offices.

Also by 6 & 7 *Will.* 3. *c.* 4, freemen of the apothecaries company in *London*, and within seven miles thereof, and also apothecaries in any other place, who have been brought up and served as apprentices in the said art for seven years, shall be exempted from the office of constable, scavenger, overseer of the poor, and all other parish, ward and leet offices, and from being put on any jury or inquest where they live, for so long as they use the said art.

Surgeons exempt from serving offices.

Also by 5 *Hen.* 8. *c.* 6, the wardens and fellowship of surgeons infranchised in *London*, and all barber surgeons admitted and approved according to the statutes made in that behalf, not exceeding the number of twelve, shall be discharged of serving as constables, watch, and all manner of offices bearing any armour, and also of all inquests and juries within the city.

And by 18 *Geo.* 2. *c.* 15. *s.* 10, for making the surgeons of *London* and the barbers of *London* two separate and distinct corporations, it is enacted, that "all freemen of the corporation

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* See 5 *Hen.* 8. *c.* 6, infra.

of surgeons, for so long time as they shall use and exercise the art or science of surgery, and no longer, shall be exempted from the several offices of constable, scavenger, overseer, and all other parish, leet, and ward offices, and from serving upon juries.

It seems that by the equity of the above statutes, and *the ancient custom of the realm*, all surgeons have been allowed the like privilege. 2 *Hawk.* c. 10. *s.* 43.

And on an indictment against a surgeon for refusing the office of constable, it may be moved to the attorney general, that a *noli prosequi* be granted, unless cause be shewn by the opposite party against it. *Comyns's Rep.* 312.

For the criminality of physicians, apothecaries and surgeons, in respect of death occasioned by any unskilful applications of medicines, see title *HOMICIDE*.

*Pickpockets.* See FELONY (without Clergy, § *Larcenies* 1.)

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## PIGEONS.

A LORD of a manor may build a dove cote upon his own land, parcel of the manor: but a tenant of a manor cannot do it without the lord's licence. 3 *Salkeld*, 248.

But any freeholder may erect a dove-cote on his own ground. *Cro. Eliz.* 548. *Cro. Jac.* 382.

Therefore it hath been adjudged, that the erection of a dove-house is not a nuisance, nor presentable in the leet. *Cro. Jac.* 490.

And doves in a dove-house, young and old, shall go to the heir, and not to the executor. *Co. Lit.* 8.

Wilfully destroying pigeons.

It was enacted by 1 *Jac.* 1. *c.* 27. *s.* 2, that every person who shall shoot at, kill, or destroy any house dove or pigeon with any gun or bow; or shall take, kill, or destroy the same with setting dogs and nets, or with any manner of nets, snares, engines or instruments whatsoever; shall on conviction, before two justices where the offence shall be committed or the offender apprehended, by confession, or oath of two witnesses, be committed to gaol for three months,

unless he pay to the churchwardens, for the use of the poor of the parish where the offence was committed or the offender apprehended respectively, 20*s.* for every pigeon, or after one month after his commitment become bound by recognizance with two sureties, before two justices, in 20*l.* a piece, not to offend again in like manner. The recognizance to be returned to the next sessions.

' But the method of convicting offenders against the above ' act having been found ineffectual, it was by 2 *Geo.* 3. *c.* 29. ' for the purpose of more speedy convicting such offenders," enacted, that if any person shall shoot at, with an intent to kill, or shall by any means whatever kill or take, with a wilful intent to destroy, any house dove or pigeon, and shall be thereof convicted by confession, or the oath of one witness, before one justice where such offence shall be committed, or the party apprehended, he shall forfeit twenty shillings to the person prosecuting; and if not forthwith paid, such justice may commit such offender to the common gaol, or house of correction, there to remain and be kept to hard labour for not exceeding three calendar months, nor less than one, unless the forfeiture be sooner paid. *s.* 1.

But nothing herein shall hinder any owner of a dove-cote, pigeon-house, pigeon chamber, or other place, from taking, killing or destroying, by himself, or any person by him authorized, any house-doves or pigeons therein. *s.* 2.

And no person convicted under this act, shall be liable to be convicted under any other act; and the prosecution shall be commenced and carried on with effect within two calendar months after the offence committed; and where any person shall suffer imprisonment for default of payment of the penalty, he shall not be liable afterwards to pay such penalty. *s.* 3.

Pigeons trespassing.

It seems that if pigeons come upon my land, I may kill them, and the owner hath not any remedy; but the owner of the land is to take heed, that he takes them not by any means prohibited by the statutes. *Cro. Jac.* 492.

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# PILLORY AND TUMBRIL.

Pillory.

THE *pillory* is the usual punishment of any convicted of an infamous crime; as perjury, forgery and the like. *Comyns's Dig. tit.* " *Tumbril.*" (*B*).

So it may be inflicted for other enormous offences, as for false rates by a public assessor, for a libel on a magistrate, or the

government and the like. *Coymns's Dig. tit.* "*Tumbril*" (B). 6 *Mod. Rep.* 306. *Cro. Car.* 306.

Also by several statutes, particular offences are subjected to the punishment of the pillory *.

By 51 *Hen.* 3. *st.* 6. a pillory of convenient strength shall be in every liberty.

Also by statute 31 *Ed.* 1. *de pistoribus*, the pillory ought to be of convenient strength, that execution may be done without peril to the body of the offender.

And in the case of the *King* v. *Beardmore*, *Tr* 32 & 33 *Geo.* 2. it was determined that the head and hands of the offender ought to be put *in and through the holes of the pillory*, and so continue the whole time; and if this is omitted, it is a contempt, and the court will punish the under sheriff by fine and imprisonment. 2 *Burrow's Rep.* 792.

Tumbril.

The *tumbril*, or *trebutchet*, is an instrument for the punishment of women that scold, or are unquiet, now called a *cucking stool* †. *Lambarde*, *b.* 1. *c.* 12.

Pillory and tumbril to be in every franchise.

And the lord of a leet ought to have pillory, tumbril, stocks, and other instruments of correction, for offences which may be punished within the leet: and for the neglect thereof, which is inquirable in the leet, it is said that the liberty may be forfeited, or the lord fined to the king. *Comyns's Dig. tits.* "*Leet*" (K) and "*Tumbril*" (A).

But it is said, that a ville may be bound by prescription to provide a pillory and tumbril, 2 *Hawk. c.* 11. *s.* 5.

Consequences of this kind of punishment.

It seems to have been anciently holden, that judgment of the pillory or tumbril, for any crime whatsoever, rendered the party infamous; it was therefore said by Sir *Edward Coke*, that justices should be well advised before they gave judgment of any person to the pillory or tumbril, unless they had good warrant for that judgment therein; fine and imprisonment for offences fineable by them, being a fair and sure way: BUT the rigour of this piece of law has been since reduced to reason, for now it is holden, that unless a man be put in the pillory for some *infamous crime* (*pro crimine falsi*) as for perjury or forgery, or the like, it is no blemish to his attestation; for *it is the crime, and not the punishment*, that makes the man infamous. 3 *Inst.* 219. 2 *Hawk. c.* 46. *s.* 19. *Bull. N. P.* 292. *Gilb. L. Ev.* 143.

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* These are noticed under the proper titles.

† By *ducking* them over head and ears in water, and especially in muddy or stinking water, the word *tumbril*, according to *Coke*, signifying also a dung cart ‡. 3 *Inst.* 219.

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‡ In this sense it seems to be used in the highway and turnpike acts.

# PIRACY.

Piracy a capital offence by the civil law.

THE crime of PIRACY, or robbery and depredation upon the high seas, is a capital offence, by the civil law*. 1 *Hawk. c.* 37. *s.* 1. 2 *Hale's Hist.* 369, 370. 4 *Black. Com.* 71.

Formerly this offence was cognizable by the *Admiralty Courts*, which proceed by the rules of the civil law: but this proving very inconvenient, because by that law no offender can have judgment of death without his own confession, or direct proof by eye witness, the stat. 28 *Hen.* 8. *c.* 15. established a new jurisdiction for this purpose; which proceeds according to the course of the common law. 4 *Black. Com.* 71. 1 *Hawk. c.* 37. *s.* 3.

How punished by statute.

And by that statute it is enacted, that 'all felonies, robberies, murthers and confederacies upon the sea, or in a haven, 'river, creek, or place, where the admiral or admirals have or 'pretend to have power, authority, or jurisdiction, shall be 'inquired, tried, heard, determined, and adjudged in such 'shires and places in this realm, as shall be limited by the king's 'commission or commissions to be directed for the same, in like 'form and condition, as if such offence or offences had been 'committed or done in or upon the land, and such commissions 'shall be had under the king's great seal, directed to the admi'ral or admirals, or his or their lieutenant, deputy and deputies,

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* The crime of *piracy* is an offence against the universal law of society, a pirate being, according to sir *Ed. Coke*, *hostis humani generis*. As therefore he has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature, by declaring war against all mankind; all mankind must declare war again him: so that every community hath a right, by the rule of self-defence, to inflict that punishment upon him which every individual would in a state of nature have otherwise been entitled to do, for any invasion of his person or personal property. 4 *Black. Com.* 71.

And sir *Charles Hedges*, in his charge at the *Old Bailey*, 8 *Will.* 3, said, the king of *England* hath not only an empire and sovereignty over the *British* seas for the punishment of piracy, but, in concurrence with other princes and states, an undoubted jurisdiction and power in the most remote parts of the world. If any person therefore, native or foreigner, christian or infidel, *Turk* or *Pagan*, with whose country we are in amity, trade or correspondence, shall be robbed or spoiled in the narrow or other seas, whether the *Mediterranean*, *Atlantic*, *Southern*, or any branches thereof, either on this or the other side of the line, it is piracy within the limits and cognizance of the admiralty sessions. 1 *Hawk. c.* 37. *s.* 1. *n.* (1.)

'and to three or four such other substantial persons, as shall 'be named or appointed by the lord chancellor of *England* for 'the time being, from time to time, and as oft as need shall re-'quire, to hear and determine such offences, after the common 'course of the laws of this land, used for such offences done 'and committed upon the land within this realm.' 28 *Hen.* 8. *c.* 15. *s.* 1.

And it is further enacted, by the said statute, 'that if any 'person or persons happen to be indicted for any such offence 'done, or hereafter to be done, upon the seas, or in any other 'place above limited, that then such order, process, judgment, 'and execution, shall be used, had, done, and made to and 'against every such person and persons so being indicted, as 'against felons, for any felony upon the land, as by the laws 'is accustomed.' *s.* 2.

And by 11 & 12 *Will.* 3. *c.* 7, 'all piracies, felonies, and 'robberies committed in or upon the seas, or in any place 'where the admiral has jurisdiction, may be tried and determin-'ed at sea, or upon the land, in any of his majesty's islands or 'plantations, to be appointed by the king's commission under 'the great seal, or the seal of the admiralty, directed to any 'of the admirals, vice admirals, rear admirals, judges of vice 'admiralties, or commanders of ships of war, and also to any 'such persons as his majesty shall appoint, being known mer-'chants, factors, or planters, or captains, lieutenants, or war-'rant officers in ships of war, or captains, masters, or mates 'of some English ships, which persons shall have power jointly 'or severally by warrant, under hand and seal of any of them, 'to commit any person against whom information of any such 'offence shall be given upon oath, and to call a court of ad-'miralty, which shall consist of seven persons at the least, and 'shall proceed in the trial of the said offenders, according 'to such directions as are set forth at large in the said statute.' *s.* 1, 2, 3, 4, 5, 6.

Principals.

And it is further enacted by the said statute 28 *Hen.* 8. *c.* 15, 'that such as shall be convicted of any such offence by 'verdict, confession or process, by authority of any such com-'mission, shall have and suffer such pains of death, losses of 'lands, goods, and chattels, as if they had been attainted and 'convicted of such offence done upon the land, and also that 'they shall be excluded from the benefit of clergy.' *s.* 3.

Accessaries.

And by 11 & 12 *Will.* 3. *c.* 7, 'all persons who shall either 'on land or upon the seas, knowingly set forth any pirate, or 'assist or maintain, procure, command, counsel, or advise, any 'person to commit any piracies or robberies upon the seas, and 'such person shall thereupon commit any such piracy or rob-'bery, all such persons shall be adjudged accessary to such piracy 'and robbery, and after any piracy or robbery committed, every 'person who, knowing that such pirate or robber has com-

'mitted such robbery, shall, on the land or on the sea, receive, 'entertain, or conceal, any such pirate or robber, or receive 'any ship or goods by such pirate or robber piratically and fe-'loniously taken, shall be adjudged accessary to such piracy 'and robbery. And all such accessaries may be enquired of, 'heard, and determined, after the common course of the law, 'according to the statute 28 *Hen.* 8. c. 15. as the principals of 'such piracies and robberies ought to be; and being attainted 'shall suffer death, and loss of lands and goods, in like man-'ner as the principals.' *s.* 9.

And by 8 *Geo.* 1. c. 24, 'all such accessaries are declared 'principal pirates, and excluded the benefit of clergy.' *s.* 3, 4.

Standing mute.

And by 12 *Geo.* 3. *c.* 20*, 'persons standing mute on any 'indictment for piracy, shall be convicted, and the court may 'award the same judgment as on a conviction by verdict or 'confession.'

In the exposition of the stat. 28 *Hen.* 8. it has been holden; First, that it does not alter the nature of the offence so as to make that which was before a felony only by the civil law, now become a felony by the common law; for the offence must still be alleged as done upon the sea, and is no way cognizable by the common law, but only by virtue of this statute, which by ordaining that in some respects it shall have the like trial and punishment, as are used for felony at common law, shall not be carried so far as to make it also agree with it in other particulars which are not mentioned. 1 *Hawk.* *c.* 37. *s.* 6.

Secondly, it is agreed that this statute extends not to offences done in creeks or ports within the body of a county, because they are, and always were, cognizable by the common law. 1 *Hawk.* *c.* 37. *s.* 11.

Thirdly, it has been holden, that the indictment for this offence must allege the fact to be done upon the sea, and must have both the words *feloniously* and *piratically*. 1 *Hawk.* *c.* 37. *s.* 10.

And that no offence is punishable by virtue of this act as piracy, which would not have been felony if done upon the land; and consequently that the taking of an enemy's ship by an enemy is not within the statute. 1 *Hawk.* *c.* 37. *s.* 10.

But by statute some other offences are made piracy also. 4 *Black.* *Com.* 72.

Committing hostilities at sea under a foreign commission.

'Thus by 11 & 12 *Will.* 3. *c.* 7, if any of his majesty's sub-'jects shall commit piracy or robbery, or any act of hostility 'against others his majesty's subjects upon the sea, under colour 'of any commission from any foreign state, or authority from

* See p. 465. supra.

'any person whatsoever, such offenders, and every of them 'shall be adjudged pirates, felons, and robbers; and being con-'victed according to this act, or 28 *Hen.* 8. *c.* 15, shall suffer 'pains of death, and loss of lands and goods.' *s.* 7.

'And by 18 *Geo.* 2. *c.* 30, all persons, being natural born 'subjects or denizens of his majesty, who, during any war, shall 'commit any hostilities upon the sea, or in any haven, river, 'creek, or place, where the admiral or admirals have power, au-'thority or jurisdiction, against his majesty's subjects, by virtue 'or under colour of any commission from any of his majesty's 'enemies, or shall be any other ways adherent, or giving aid 'or comfort, to his majesty's enemies upon the sea, or in any 'haven or place aforesaid, such persons may be tried as pirates, 'felons and robbers in the said court of admiralty, on ship-'board or upon land, in the same manner as persons guilty of 'piracy, felony, and robbery, are directed to be tried, and on 'conviction, shall suffer such pains of death, loss of lands and 'goods as any other pirates ought by virtue of 11 & 12 *Will.* 3. '*c.* 7, or any other act: provided that any person who shall 'be tried and acquitted according to this act shall not be liable 'to be prosecuted for the same crime or fact, as high treason; 'but this act shall not prevent any persons who shall not be 'tried according to it, from being tried for high treason. '*s.* 1, 2, 3.

Captain or seamen betraying their trust.

'Also by the said statute 11 & 12 *Will.* 3. *c.* 7, if any com-'mander of any ship, or any mariner, shall in any place where 'the admiral hath jurisdiction, betray his trust, and turn pirate, 'enemy, or rebel, and piratically and feloniously run away with 'the ship, or any boat, ordnance, ammunition, or goods, or 'yield them up voluntarily to any pirate, or shall bring any 'seducing messages from any pirate, enemy or rebel, or consult 'or confederate with, or attempt to corrupt, any commander, 'officer, or mariner, to yield up or run away with any ship or 'goods, or turn pirate, or go over to pirates, or if any person 'shall lay violent hands on his commander, to hinder him from 'fighting in defence of his ship and goods, or confine his master, 'or endeavour to make a revolt in the ship, he shall be adjudged 'a pirate, felon, and robber, and being convicted according 'to this act shall suffer death, and loss of lands and goods. '*s.* 8.

'And by 4 *Geo.* 1. *c.* 11, all persons who shall commit any 'offences for which they ought to be adjudged pirates by the 'act 11 & 12 *Will.* 3. *c.* 7, may be tried as by the act 28 '*Hen.* 8. *c.* 15, and shall be debarred from the benefit of cler-'gy. *s.* 9.

Trading with pirates.

'Also by 8 *Geo.* 1. *c.* 24, *made perpetual by* 2 *Geo.* 2. '*c.* 28, if any commander of any ship, or other person, shall 'trade with any pirate, or shall furnish any pirate, felon, or 'robber on the seas, with ammunition, provisions or stores, or

'shall fit out any ship knowingly and with design to trade or 'correspond with any pirate, *&c.* or if any person shall consult, 'combine, or correspond with any pirate, *&c.* knowing him to 'be guilty of any piracy, felony, or robbery, such offender 'shall be adjudged guilty of piracy, felony, and robbery, 'and shall be tried according to the statutes 28 *Hen.* 8. *c.* 15, 'and 11 & 12 *Will.* 3 *c* 7. and being convicted, shall suffer 'death, and loss of lands and goods. *s.* 1.

To board a merchant ship and throw the cargo overboard.

'And if any person belonging to any ship, upon meeting any 'merchant ship on the high seas, or in any port, haven, or 'creek, shall forcibly board and enter such ship, and though 'they do not seize and carry her off, shall throw over-board or 'destroy any of the goods, they shall be punished as pirates. '*s.* 1.

'And every ship fitted out with a design to trade or corres'pond with any pirate, and all the merchandizes put on board 'the same with an intention to trade with any pirate, shall be 'forfeited; one moiety to the king, the other to the first dis'coverer of such design, who may sue for the ship, *&c.* in the 'high court of admiralty. *s.* 2.

'And every offender convicted of any piracy, felony, or 'robbery, by virtue of this act, shall not have benefit of cler'gy. *s.* 4.

Encouragement to resist pirates.

Also to encourage the defence of merchant vessels against pirates, it is enacted by 11 & 12 *Will.* 3. *c.* 7. that when any *English* ship shall have been defended against pirates, enemies, or sea rovers, by fight, and brought to her port, in which fight any of the officers or seamen shall have been killed or wounded, it shall be lawful for the judge of his majesty's high court of admiralty, or his surrogate in the port of *London, or the mayor, bailiff, or chief officer,* in the several out ports of this kingdom, upon petition of the master or seamen of such ship, to call unto him four or more substantial merchants, and such as are no adventurers or owners of the ship or goods, and have no interest therein, and by advice with them to raise upon the adventurers and owners of the ship and goods, by process out of the said court, such sums of money as himself and the said merchants, by plurality of voices, shall judge reasonable, not exceeding two *per cent.* of the freight, and of the ship and goods according to the first cost of the goods; which money shall be distributed among the captain, masters, officers, and seamen of the ship, or widows and children of the slain, according to the direction of the judge of the said court, *&c.* with the approbation of the merchants aforesaid; who shall proportion the same to the ship's company, having special regard to the women and children of such as shall have been slain, and such as have been wounded. *s.* 10.

And by the above statute, 8 *Geo.* 1. *c.* 24, if any seaman on board of any merchant ship shall be maimed in fight against

any pirate, he shall not only receive the rewards appointed by 22 & 23 *Car.* 2. *c.* 11, (which are in substance the same as those in 11 & 12 *Will.* 3. *c.* 7. *s.* 10) but he shall also be provided for in *Greenwich Hospital* preferably to any other seaman who is disabled from service by age*. *s.* 5.

And if any commander or other officer, or seaman, of a merchant ship, which carries guns and arms, shall not, when they are attacked by any pirate, fight and endeavour to defend themselves, or shall utter any words to discourage the other mariners, and by reason thereof the ship shall fall into the hands of the pirate, every such commander, *&c.* shall forfeit all the wages due to him, to the owners of the ship, and shall suffer six months imprisonment. *s.* 6.

* Which, saith *Blackstone*, no other seamen are entitled to, except only such as have served in a ship of war.

# PLAGUE.

THE acts of parliament now in force for performing quarantine † are the 45 *Geo.* 3. *c.* 10, and 46 *Geo.* 3. *c.* 98, the provisions whereof, so far as justices of the peace have jurisdiction, are as follows:

What ships shall be liable to quarantine.

The 45 *Geo.* 3. *c.* 10, (after directing in what manner lazarets shall be established for the performance of quarantine, and imposing ship duties for the support thereof, on ships liable thereto ‡, ENACTS that all ships and vessels as well his majesty's as all others coming from or having touched at any place, from whence his majesty, with the advice of his privy council, shall have declared it probable that *the plague or any other infectious disease or distemper*, highly dangerous to the health of his majesty's subjects, may be brought, and all ships, vessels and boats receiving any person, goods, wares and merchandize, packets, packages, baggage, wearing apparel,

† The stat. 2 *Jac.* 1, commonly stiled 1 *Jac.* 1. *c.* 31, made certain provisions for the relief of persons afflicted with the plague, and to restrain them from going abroad on pain of felony, but that statute is now expired. 1 *East's Cr. L.* 226.

‡ Except such ships or vessels not separately liable to perform quarantine, and which shall be rendered liable solely by reason of having received on board thereof by force or against the will of the master and crew any person or persons.

books, letters or any other articles whatsoever, from or out of any ships or vessels so coming from or having touched at such infected place, whether the same shall have come or been brought in such ships or vessels, or such persons shall have gone, or articles have been put on board the same, either before or after the arrival of such ships or vessels, at any port in *Great Britain* or the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark* or *Man*, and whether they were or were not bound to any port in *Great Britain* or the islands aforesaid, and all persons, goods, wares, and merchandize, packets, packages, baggage, wearing apparel, books, letters, or any other articles whatever, on board of any such ships or vessels coming from or having touched at such infected place, or on board of any such receiving ships, vessels or boats, shall be liable to quarantine, and any orders made by his majesty in privy council, concerning quarantine, and the prevention of infection from the time of departure from such infected place, or from the time when such persons, goods, or articles aforesaid shall have been received on board. *s.* 10.

And all such ships, vessels and boats as aforesaid, and all persons (as well pilots as others) goods, and other articles as aforesaid, whether brought in such ships, vessels or boats from such infected place as aforesaid, or going or being put on board the same, either before or after the arrival of such ships, vessels, or boats, at any port in *Great Britain* or the islands aforesaid, and all persons, goods and other articles as aforesaid, on board any such receiving ship, vessel, or boat, shall upon their arrival at any such port be obliged to perform quarantine, in such place, for such time, and in such manner, as shall be directed by his majesty by his order in council, notified by proclamation, or published in the London Gazette. *s.* 10.

And until the same shall have performed, and shall be duly discharged from, such quarantine, no such persons, goods, or other articles as aforesaid, shall come or be brought on shore, unless in such manner and in such cases, and by such licence, as shall be directed by such order in council as aforesaid. *s.* 10.

And all such ships, vessels or boats, and all persons (as well pilots as others) goods, wares, and merchandize, and other articles as aforesaid, and all commanders, masters, or other persons having the command of such ships, vessels or boats liable to quarantine as aforesaid, shall be subject to all the provisions, rules, regulations and restrictions contained in this act, or in any order made by his majesty in council, concerning quarantine and the prevention of infection, and to all the pains, penalties, forfeitures, and punishments contained in this act, for any breach or disobedience thereof, or of any order of his majesty in council. *s.* 10.

Goods specified in any order of council.

All such goods and merchandize as shall be particularly specified in any order made by his majesty, in council, imported

from any foreign country, in any ship or vessel whatever, and the ships or vessels in which the same shall be brought, and also all ships and vessels which shall arrive from any port or place whatever under any alarming or suspicious circumstances as to infection, shall be subject to such regulations and restrictions as shall be made by such order of his majesty in council. *s.* 11.

and ships shall be made subject to quarantine.

It shall be lawful for the privy council, to make such order as they shall see necessary upon any unforeseen emergency, or in any particular case, with respect to any ships or vessels, arriving and having any infectious disease or distemper on board, or on board of which any infectious disease or distemper may have appeared in the course of the voyage, or arriving under any other alarming or suspicious circumstances as to infection, although such ships or vessels shall not have come from any place from which his majesty may have declared it probable that the plague, or any such infectious disease or distemper may be brought, and also with respect to the persons, goods, wares, and merchandize, and other articles as aforesaid, on board the same, and in case of any infectious disease or distemper appearing or breaking out in *Great Britain*, or the islands aforesaid, to make such orders, and give such directions, in order to cut off all communication between any persons infected with any such disease or distemper and the rest of his majesty's subjects, as shall appear to the privy council to be necessary, and likewise to make such orders as they shall see fit for shortening the time of quarantine to be performed by particular ships or particular persons, goods, wares, merchandize, or any other articles, or for wholly releasing particular ships or vessels, or particular persons, goods, wares, merchandize, or other articles from quarantine, absolutely or conditionally, and generally to mitigate the strict performance of quarantine in particular cases, as circumstances shall require; and all such orders shall be as good, valid, and effectual, as any order made by his majesty with the advice of his privy council, concerning quarantine, and the prevention of infection as aforesaid, and notified by proclamation or published in the London Gazette. *s.* 12.

The privy council may make such orders as they shall think necessary upon emergencies.

If the plague, or such other infectious disease or distemper as aforesaid, shall appear on board any ship or vessel within the streights of *Gibraltar*, the commander shall immediately proceed to some one of the foreign lazarets, and there perform quarantine, until such time as the land lazaret, to be erected under the authority of this act at *Chetney Hill*, shall, by his majesty with the advice of his privy council, and by order notified by proclamation, or published in the *London Gazette*, have been declared to be fit for the due performance of quarantine therein; but if it shall appear on board any vessel without the streights of *Gibraltar*, then the commander shall (unless such land lazaret shall have been so declared to be fit for the due performance of quarantine therein) immediately proceed

Regulations for vessels in which infection shall appear, within or without the streights of Gibraltar, previous to the lazaret at Chetney hill being completed.

to the harbour of *Saint Helen's*, *Tean* and *North Withel*, two of *the islands of Scilly*, or to such other place as his majesty shall direct; where being arrived he shall make known his case to some officer of customs, who shall immediately acquaint the governor, deputy governor, or other principal magistrate thereof, and also the principal officers of the customs at some port in *England* near thereunto; and the said principal officer at such near port in *England* shall with all possible speed send intelligence thereof to the commissioners of customs in the port of *London*; and shall, in like manner, send intelligence thereof to the privy council, to the end that such measures may be taken for the comfort and support of the crew and passengers, and such precautions used to the spreading of the infection, as the case shall require; and the said vessel shall there remain until directions shall be given relative thereto by the privy council, nor shall any of the crew or passengers go on shore; but in case the said commander shall not be able to make the said islands of *Scilly*, or other place so appointed by his majesty, or shall be forced by stress of weather or otherwise to go up either of the channels, it shall not be lawful for him to enter into any other port in *Great Britain*, or the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, but he shall remain in some open road till he receives directions relative thereto from the privy council, and he shall use every necessary means in his power to prevent any of the ship's company or passengers from going out of his ship, and to avoid all intercourse with other ships, vessels, or persons; and such ship's company or passengers shall, until such commander shall have received such directions, remain in such ship, and shall avoid all intercourse with other ships, vessels, or persons; and such master, and every other person on board such ship or vessel shall obey such directions as he shall receive from the privy council, and the said commander, master, or any other person on board, who shall not act conformably to the provisions herein directed, or shall act in disobedience to such directions as shall be received on board from the privy council, shall be guilty of felony, without benefit of clergy. *s.* 13.

Masters of ships to make signals on meeting other ships at sea, or being within four leagues of the united kingdom, or Guernsey, &c. on penalty of 200l.

Every commander, of any vessel liable to quarantine, shall when such ship or vessel shall meet with any other at sea, or shall be within four leagues of the coast of *Great Britain* or *Ireland*, or the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, hoist a signal to denote that his vessel is liable to the performance of quarantine, which signal shall be, in the day time, if the ship shall have a clean bill of health, a large yellow flag of six breadths of bunting at the main-topmast head; and if such vessel shall not have a clean bill of health, then a like yellow flag, with a circular mark or ball entirely black in the middle thereof, whose diameter shall be equal to two breadths of bunting; and in the night time the signal shall in both cases

be a large signal lanthorn, with a light therein (such as is commonly used on board his majesty's ships of war), at the same mast-head. *s.* 14.

Signal to be used by ships having the plague, &c. actually on board.

And every commander of any ship or vessel, on board whereof the plague or other infectious disease or distemper highly dangerous to the health of his majesty's subjects, shall actually be, shall at all times when such vessel shall meet with any other ship at sea, or shall be within four leagues of the coast, or islands aforesaid, hoist a signal which shall be in the daytime a flag of yellow and black, borne quarterly, of eight breadths of bunting at the main top-mast head, and in the night time the signal shall be two large signal lanthorns (such as are commonly used on board of his majesty's ships of war) one over the other at the same mast head.

And such commander shall keep such signals respectively, as the case shall be, hoisted during such time as the said ship shall continue within sight of such other ship, or within four leagues of the said coasts or islands, and while so in sight, or within such distance, until such ship so liable to quarantine shall have arrived at the port where it is to perform quarantine, and until it shall have been legally discharged from the performance thereof; on failure whereof such commander shall forfeit two hundred pounds. 45 *Geo.* 3. *c.* 10. *s.* 14. 46 *Geo.* 3. *c.* 93. *s.* 1.

Penalty of 200*l*. on persons hoisting signals when not liable.

And if any commander, knowing that the same is not liable to the performance of quarantine, shall hoist such signals, as are required by 45 *Geo.* 3. *c.* 10. he shall forfeit two hundred pounds. 45 *Geo.* 3. *c.* 10. *s.* 15.

Masters of vessels, on their arrival from foreign parts, to give to the pilots an account of the places at which they shall have loaded and touched, on penalty of 200*l*. &c.

Every commander of any vessel coming from foreign parts, shall give to the pilot who shall go on board a written paper, containing a true account of the names of the place and country at which such vessel shall have loaded, and also of the places at which any such vessel shall have touched at the homeward voyage, and of the different articles composing the cargo, on pain of forfeiting two hundred pounds for any neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order in council, ships and vessels coming from any place mentioned in any such paper, or having on board any of the articles mentioned in such paper, shall be liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander of such ship, on pain of forfeiting one hundred pounds for any neglect therein; and such commander or other person shall thereupon hoist a proper signal according to the provisions of the act, and under the penalties therein contained, for any neglect or refusal in respect of hoisting such signals. 45 *Geo.* 3. *c.* 10. *s.* 16. 46 *Geo.* 3, *c.* 98. *s.* 2.

Penalty of 100*l*. on pilots bringing ships

In case any pilot shall bring any ship or vessel liable to quarantine, into any place which is not, or which shall not be spe-

liable to quarantine into places not appointed for their reception.

cially appointed for the reception of ships so liable after receiving such paper as aforesaid, or without requiring and receiving such paper of and from every such commander coming from foreign parts, unless compelled by stress of weather, adverse winds, or accidents of the seas, such pilots shall forfeit one hundred pounds. 45 *Geo.* 3. *c.* 10. *s.* 17. 46 *Geo.* 3. *c.* 98. *s.* 2.

For better ascertaining whether ships be actually infected, or the persons on board liable to orders touching quarantine.

And, when any country shall be known to be, or suspected to be infected with the plague, or other such infectious disease or distemper as aforesaid, or when any order shall be made in council concerning quarantine, then, as often as any ship shall attempt to enter into any port in *Great Britain*, or of the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, whether such port shall have been appointed for the performance of quarantine or not, the superintendant of quarantine, or his assistant, if there shall be such, or if not, the principal officer of customs shall go off to such vessel, and shall, at a convenient distance, demand of the commander, who shall upon such demand give a true answer in writing or otherwise, and upon oath or not upon oath, according as he shall by such superintendant, assistant, or other officer, be required, to all such questions as shall be put to him, by virtue of such regulations as his majesty, by order in council, shall prescribe; and in case such commander shall refuse to make a true discovery, or in case he shall not be required to answer upon oath, shall give a false answer, he shall forfeit two hundred pounds. 45 *Geo.* 3. *c.* 10. *s.* 18.

Penalty on pilot or master for not bringing to on request of quarantine officer.

If any pilot being on board, or any commander, whether such ship or vessel shall be liable to quarantine or not, shall be required by any officer of customs authorized to act in the service of quarantine, to bring to such ship or vessel, to the end that the commander may be interrogated, and shall neglect or refuse to bring to as soon as it can be done with safety, such pilot, commander, or person having the charge of such ship, shall forfeit one hundred pounds. 46 *Geo.* 3. *c.* 98. *s.* 3.

Ships subject to quarantine, arriving at any other port than that at which it ought to be performed, may be forced to repair to the appointed place.

In case it shall appear upon such examination, that such ship is under such circumstances as shall render it liable to perform quarantine, and that the port where it arrives is not the port where it ought to perform quarantine, the officers of any ships of war, or of any forts or garrisons, and all other his majesty's officers upon notice thereof, and any other person or persons whom they shall call to their aid and assistance, are to oblige such ship to go to such place as shall be appointed for performance of quarantine, and to use all necessary means for that purpose, either by firing of guns, or by any other kind of necessary force; and in case any such vessel shall come from or shall have touched at any place infected by the plague, or such other infectious disease or distemper as aforesaid, or shall have any person on board actually infected with the plague, or such other infectious disease or distemper as aforesaid, and the commander, knowing the same,

Masters of vessels that have touched

shall refuse or omit to disclose the same upon such examination, or shall wilfully omit to hoist the signal directed, to denote that his vessel is liable to quarantine, such commander, master, or person having charge of such vessel, shall be guilty of felony, without benefit of clergy. *s.* 19.

at infected places, &c. omitting to disclose the same, or omitting to hoist the prescribed signal, shall suffer death.

And every commander of any vessel ordered to perform quarantine, shall, after his arrival at the place appointed, deliver on demand to the superintendant of quarantine or his assistant, or other officer of the customs, which officer is to make such demand, his bill of health and manifest, together with his log book and journal, under the pain of forfeiting one hundred pounds. *s.* 20.

Commanders to deliver up bills of health, manifests, and log-books, to the superintendant of quarantine, on penalty of 100*l*.

And if any commander of any vessel liable to quarantine, and on board of which the plague, or other such infectious disease or distemper shall not then have appeared, shall himself quit or knowingly permit any seaman or passenger to quit such vessel by going on shore, or by going on board any other ship, boat, or vessel, before quarantine shall be fully performed, unless in such cases and by such licence as shall be directed and granted, and by virtue of such order to be made concerning quarantine, as aforesaid; or in case any commander shall not, within a convenient time after notice, cause such vessel, and the lading thereof, to be conveyed into the place appointed to perform quarantine, then such commander shall forfeit five hundred pounds; and if any person coming in any vessel liable to perform quarantine (or any pilot or other person going on board the same) shall quit such vessel by going on shore in any port in *Great Britain* or the islands aforesaid, or by going on board any other ship, vessel, or boat with intent to go on shore, before such vessel liable to quarantine shall be discharged from the performance thereof, it shall be lawful for all persons whatsoever by any kind of necessary force, to compel such pilot or other person to return on board, and every such pilot and other person so quitting such vessel, shall suffer imprisonment for six months, and forfeit two hundred pounds. *s.* 21.

Penalty on masters, &c. quitting vessels, or permitting persons to quit them, or not conveying ships to the appointed places, and on persons coming in such vessels, or going on board, quitting them before discharged.

When any vessel which has performed quarantine in any foreign lazaret shall arrive in any of the ports of *Great Britain*, or the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, with a clean bill of health, no goods shall be permitted to be landed or unshipped, unloaded or moved, in order to be landed; but the commander shall immediately upon his arrival give notice thereof, and of the foreign port in which such vessel hath performed quarantine, to the principal officer of customs, in order that the same may be laid before the privy council; and if the commander or any person whatsoever, shall land, or unship, unload, or move, in order to land any goods before an order of council shall be made, giving directions therein, or otherwise than shall be directed in the said order, such person shall forfeit two hundred pounds. *s.* 22.

No goods to be landed from vessels having performed quarantine in a foreign lazaret, without notice to the officer of the customs, nor before directions from the privy council, on penalty of 200*l*.

For punishing disobedience or refractory behaviour in persons under or liable to quarantine, or persons having intercourse with them.

All persons liable to perform quarantine, and all persons having had any intercourse with them, whether in ships or in a lazaret, or elsewhere, shall be subject, during the said quarantine, or during the time they shall be liable to quarantine, to such orders as they shall receive from the superintendant or his assistant, or from the principal officer of the customs, and the said officers are to enforce all necessary obedience to the said orders, and in case of necessity to call in others to their assistance, and all persons so called in are to assist accordingly; and such officers shall compel all persons liable to perform quarantine, and persons having had any intercourse with them, to repair to such lazaret, ship, vessel, or place, and to cause all goods comprized within any such orders, to be conveyed to such lazaret, ship, vessel, or place according to such directions as shall be made by order of council; and if any person liable to perform quarantine, or any person having had any intercourse with them, shall refuse or neglect to repair, when required, to the said lazaret, ship, vessel, or place, or having been placed therein, shall escape or attempt to escape out of the same before quarantine duly performed, it shall be lawful for the quarantine officers, and also the watchmen and other persons appointed to see quarantine performed, by such necessary force as the case shall require, to compel every such person to repair or return to such lazaret, ship, vessel, or place, and every person so refusing or neglecting to repair, and also every person actually escaping, shall be guilty of felony, without benefit of clergy. *s.* 23.

Persons quitting ships liable to perform quarantine, &c. may be seized.

'And it shall be lawful for any constable, headborough, tythingman, or other peace officer, or any other person to seize and apprehend any person that shall, contrary to this act, have quitted or come on shore from any ship liable to perform quarantine, or who shall have escaped from or quitted any ship or vessel under quarantine, or from any lazaret, ship, vessel, or place, appointed in that behalf, for the purpose of carrying such person before any justice of the peace, and it shall be lawful for any such justice of the peace to grant his warrant for the apprehending and conveying of any such person to the ship or vessel from which he shall have come, or to any ship or vessel performing quarantine, or lazaret, from which he shall have escaped, or for the confining of any such person in any such place of safe custody, (not being any public gaol,) and under such restrictions as to having any communication with any other persons, as may, in the discretion of any justice of the peace, (calling to his aid, if he shall see fit, any medical person,) appear to be proper, until such person can be safely conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the privy council, as to the disposal of any such person, and to make any further order that may be necessary in that behalf.' *s.* 24.

If any officer of customs, or any other officer or person whatsoever to whom it shall appertain to execute any order concerning quarantine, shall embezzle any goods or articles performing quarantine, or be guilty of any other wilful breach or neglect of duty, such officer and person shall forfeit such office or employment, and shall become from thenceforth incapable to hold the same, or take a new grant thereof; and every such officer and person shall forfeit one hundred pounds; and if any such officer or person shall desert from his duty when employed, or shall permit any person, ship, vessel, goods or merchandize, to depart or be conveyed out of the lazaret, ship, or other place as aforesaid, unless by permission under an order of privy council, or if any person hereby authorized to give a certificate of a ship having duly performed quarantine or airing, shall knowingly give a false certificate thereof, such person shall be guilty of felony without benefit of clergy; and if any such offender or person shall knowingly and wilfully damage any goods, he shall pay treble damages and full costs to the owner. *s.* 26.

Penalty on persons embezzling goods performing quarantine, neglecting or deserting their duty, or permitting persons, ships, &c. to part without authority, or giving false certificates, or damaging goods.

If any person not infected nor liable to perform quarantine, shall enter the said lazaret or place so appointed as aforesaid, whilst any person infected or under quarantine shall be therein, such person shall perform quarantine there, and if he shall return or attempt to return from thence unless in such cases and by such licences as shall be directed by such orders in council, it shall be lawful for the quarantine officers, watchmen, and persons appointed to guard the lazaret, by such necessary force as the case shall require, to compel such persons to repair into the said lazaret, there to continue and perform quarantine; and in case such person shall actually escape out of the said lazaret, where he ought to have performed quarantine, before he shall have fully performed the same, he shall be guilty of felony, without benefit of clergy. *s.* 27.

Persons not infected entering the lazaret shall perform quarantine, and attempting to escape, may be compelled to return, and such persons escaping shall suffer death.

After quarantine shall have been duly performed according to this act, and to such orders made as aforesaid, and upon proof to be made by the oaths of the master, and of two of the persons belonging thereto, or upon proof to be made by the oaths of two or more witnesses, before the collector or principal officer of customs, at the port where such quarantine shall be performed, or at the port nearest thereunto, *or before any justice of the peace, living near to the port*, or when such quarantine shall have been performed within any of the said isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, before any two jurats or magistrates of any of the said isles respectively, that such ship, or vessel, and all such persons have duly performed quarantine, and that the vessel, and all persons are free *from infection*; and after producing a certificate to that purpose, signed by the chief officer who superintended the quarantine of the said ship, or person acting for him, then such collector or principal officer of the customs, or such justice of the peace, or

After proof of performance of quarantine, and proper certificate to that effect, vessels or persons shall not be liable to further detention.

such jurats or magistrates as aforesaid, are to give a certificate thereof, and thereupon such ship or vessel, and all such persons so having performed quarantine, shall be liable to no further restraint or detention, upon the same account for which such ship or vessel, person or persons, shall have performed quarantine as aforesaid. *s.* 28.

Goods liable to perform quarantine shall be opened and aired as directed by order in council.

All goods, wares, and merchandize, and other articles liable to quarantine, shall be opened and aired in such places, and for such time and in such manner, as shall be directed by such orders to be made as aforesaid. 45 *Geo.* 3. *c.* 10. *s.* 29.

Certificate of goods having been opened and aired.

After such orders for the opening and airing of such goods, wares, and merchandize, and other articles, shall have been duly complied with, proof thereof shall be made by the oaths of the master of the lazaret or vessel in which the goods, wares, and merchandize, and other articles, shall have been opened and aired, and of one of the guardians, or if there be no guardian, then of one of the officers of customs authorized to act in the service of quarantine, or if there be no such officer, then by the oaths of two or more witnesses serving in the said lazaret or vessel before the superintendant of quarantine, or his assistant, in case such opening and airing shall be had at a port where such superintendant or assistant shall be established, or otherwise before the principal officer of customs, acting in the service of quarantine at such port, and such superintendant, assistant, or principal officer, shall make certificate of such proof having been made; and upon the production of such certificate to the proper officer of customs, such goods shall be liable to no further restraint or detention either at the port where such quarantine shall have been performed, or at any other place whereto they may be afterwards conveyed. 46 *Geo.* 3. *c.* 98. *s.* 5.

Power for privy council to order ships coming from America or the West Indies, when the yellow fever, &c. prevails there, to go to certain places without being liable to quarantine.

It shall be lawful for his majesty, by order in council, or the privy council, or them by their order, as often as they see reason to apprehend that the yellow fever, or other highly infectious distemper prevails on the continent of *America*, or in the *West Indies*, to require that every vessel coming from or having touched at any port on the continent of *America* or in the *West Indies*, shall come to an anchor at certain places to be appointed by the commissioners of customs, for the purpose of having the state of health of the crew ascertained before such vessel shall be permitted to enter the port whereto she may be bound, or any other port of *Great Britain;* but such vessel shall not be deemed liable to quarantine unless it shall be afterwards specially ordered under that restraint. 46 *Geo.* 3. *c.* 98. *s.* 6.

Intercourse with stations allotted for quarantine of ships without clean bills of health, may be

It shall be lawful for his majesty, by order in council, notified by proclamation, or published in the *London Gazette*, to prohibit all persons, ships, boats, and vessels whatsoever, from going under any pretence whatsoever, within the limits of any station, which, by any such order, may be assigned for the performance of quarantine by any vessels without clean bills

of health; and if any person after such notification, shall presume, under any pretence whatsoever, to go with any ship, boat, or vessel within the limits of any such station, he shall forfeit five hundred pounds. *s.* 7.

prohibited by order in council.

If any person shall knowingly and wilfully forge or counterfeit, interline, erase, or alter, or procure to be forged or counterfeited, interlined, erased, or altered, any certificate directed to be granted by any order in council touching quarantine, or shall publish as true any such forged or counterfeited, interlined, erased, or altered certificate, knowing the same, or shall knowingly and wilfully utter and publish any such certificate, with intent to obtain the effect of a true certificate to be given thereto, knowing the contents to be false, he shall be guilty of felony without benefit of clergy. *s.* 8.

Persons forging or uttering false certificates required by order in council guilty of felony.

The consuls and vice consuls of his majesty, are empowered to administer oaths in all cases respecting quarantine, in like manner as if they were magistrates of the towns where they reside. *s.* 9.

Power to consuls, &c. to administer oaths.

And in all cases wherein by virtue of this act, or any other now in force, or hereafter to be made touching quarantine, any examinations shall be taken upon oath, the person authorized to take such examinations shall be deemed to have full power to administer such oaths; and if any person who shall be so interrogated shall wilfully swear falsely, or if any person shall procure any other person so to do, he shall be deemed to be guilty of wilful and corrupt perjury or subornation of perjury, as the case may be, and suffer the punishments of the law, in such case provided. *s.* 10.

Persons authorized to take examinations may administer oaths, and persons swearing falsely, or procuring others so to do, shall be deemed guilty of perjury.

And if any person shall land or unship, or shall move, in order to the landing thereof, any goods, wares, or merchandize, packets, packages, baggage, wearing apparel, books, letters, or any other articles whatsoever, from on board any ship liable to perform quarantine, or shall knowingly receive the same after they have been so landed, such person shall forfeit not exceeding five, nor less than one hundred pounds; and if any person shall clandestinely convey, or shall secrete for the purpose of conveying, any letters, goods, wares, or merchandize, or other articles as aforesaid, from any vessel actually performing quarantine, or from the lazaret where they shall be performing quarantine, every such person shall be guilty of felony, without benefit of clergy. 45 *Geo.* 3. *c.* 10, *s.* 31.

Penalty on persons landing goods, &c. from vessels liable to perform quarantine, or receiving them, or secreting them from vessels performing quarantine.

In case it shall at any time happen that any part of *Great Britain*, *Ireland*, or the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, or *France*, *Spain*, or *Portugal*, or the *Low Countries*, shall be infected with the plague, or any other such infectious disease or distemper as aforesaid, it shall be lawful for his majesty, by proclamation, to prohibit all small boats, and vessels under the burthen of twenty tons, from sailing out of

His majesty in certain cases may prohibit vessels under twenty tons from sailing until bond be given by the

master with certain conditions.

any port until security be first given by the master to the satisfaction of the principal officer of customs, or chief magistrate of the port from whence such boat or vessel shall sail, by bond taken by such officer or magistrate, to the king, with sufficient sureties in the penalty of three hundred pounds, with condition that if such boat or vessel shall not go to or touch at any place, to be mentioned for that purpose in such proclamation, and if neither the master, nor any mariner or passenger, shall, during the time aforesaid, go on board any other ship or vessel at sea, and such master shall not permit any person to come on board at sea, from any other vessel, and shall not during the time aforesaid, receive any goods whatsoever, out of any other ship, then such bond shall be void, for the making of which bond no fee shall be taken; and in case any boat or vessel, for which such security shall be required by such proclamation, shall sail before such security be given, every such boat, together with her tackle, apparel, and furniture, shall be forfeited to his majesty, and the master of and every mariner sailing in any such boat or vessel shall forfeit twenty pounds. *s.* 32.

Penalty for sailing without giving such security.

Publication in the London Gazette, of orders in council, &c. sufficient notice.

The publication in the *London Gazette* of any order in council, or his majesty's royal proclamation, in pursuance of the same, shall be deemed sufficient notice to all persons. *s.* 33.

Recovery and application of penalties.

'All forfeitures and penalties aforesaid, that shall be incur-
'red by reason of any offence committed against any part of this
'act, may be recovered by suit in any of his majesty's courts of
'record at *Westminster*; and every such forfeiture shall be-
'long, one moiety to the person who shall inform, and the other
'to his majesty, to be applied towards defraying the expences
'of erecting and maintaining the lazaret.' *s.* 34.

In whose name actions for penalties in England or Scotland must be prosecuted.

But it shall not be lawful for any person to prosecute any action, bill, plaint, information, or prosecution, unless the same be commenced in the name of his majesty's attorney general, or in the name of some officer of customs. *s.* 35.

In prosecutions by officers of the customs, the attorney general in England or advocate in Scotland may stop proceedings.

Also, in case any prosecution shall be commenced by any officer of customs, it shall be lawful for the attorney general to stop all proceedings therein, if upon consideration of the circumstances it shall appear fit so to do. *s.* 36.

Offences not being felony, and offences for which no specific penalty is provided, may be determined before two jus-

'All offences committed against this act not being felony,
'and every offence or disobedience to any order of council,
'made for the better carrying into execution this act, for which
'no specific penalty, forfeiture, or punishment is provided by
'this act, shall be tried, heard, and determined before any two
'justices of the peace of the county or place where such offence
'or disobedience shall happen; and if any person shall be con-
'victed of any such offence or disobedience, he shall be liable to
'such forfeiture and penalty, not exceeding the sum of fifty
'pounds for one offence, or to such imprisonment not exceeding
'three months for any one offence, as shall in the discretion of

the two justices be judged proper; and such forfeiture and penalty shall be paid, one moiety to the person suing, and the other to his majesty, to be applied as the moieties of other forfeitures are herein-before directed to be applied. *s.* 38.

No attainder of felony by virtue of this act, shall be extended to work any corruption of blood, or forfeiture of goods, chattels, lands, tenements, or hereditaments. *s.* 39.

In any prosecution for any offence against this act, or any act hereafter passed, or for any breach or disobediece of any orders of the privy council notified as aforesaid, the answers of the commander, to any questions put to him by virtue of this act, or of any act which may hereafter be passed, or of any such orders as aforesaid, shall be received as evidence so far as the same relates to the place from which such vessel came, or to the place at which such vessel touched in the course of her voyage, and where any vessel shall have been directed to perform quarantine, the having been so directed to perform quarantine, shall be received as evidence that such vessel was liable to quarantine, unless satisfactory proof shall be produced by the defendant, to shew that the vessel did not come from or touch at any place as is stated in the said answers, or that such vessel, although directed to perform quarantine, was not liable to the performance thereof: and where any vessel shall in fact have been put under quarantine, at any port, by the superintendant or his assistant, or other officer of customs, and shall actually be performing the same, such vessel shall, in any prosecution against any person, for any offence against this act, or any other act which may hereafter be passed, or against any orders made by his majesty in council, or by three of the privy council as aforesaid, be deemed to be liable to quarantine, without proving in what manner or from what circumstance such vessel became liable. *s.* 40.

Whenever any person shall be charged with any offence against this act, or any act which may hereafter be passed concerning quarantine, or with any breach or disobedience of any orders made by his majesty in council, or of any order by the privy council, and the same shall be made appear to any judge of the court of King's Bench by affidavit or by certificate, of an indictment or information being filed against such person, it shall be lawful for such judge to issue his warrant in writing under his hand and seal, and thereby to cause such person to be apprehended and brought before him or some other judge of the said court, *or before one of his majesty's justices of the peace*, in order to his being bound to the king with two sureties in such sum as in the said warrant shall be expressed, with condition to appear in the said court at the time mentioned in such warrant, and to answer to all indictments or informations for any of the offences aforesaid. *s.* 41.

And in case such person shall neglect or refuse to become

tices, who may fine or imprison.

Application of penalties.

No attainder of felony shall work corruption of blood, &c.

Answers of person having the charge of vessels shall be received as evidence, so far as relates to the places from which vessels came, or at which they touched; and their having been directed to perform quarantine shall be received as evidence that vessels were liable thereto, unless proof be made to the contrary, and the being performing quarantine shall be proof of vessels being liable to perform it.

If affidavit be made of an indictment being filed, the judge of the court may cause the party to be apprehended in order to be bound for his appearance, and if he refuse to become bound he may be committed to gaol.

bound, it shall be lawful for such judge or *justice of peace* to commit such person to the common gaol until he shall have become bound or shall be discharged by order of the court of king's bench in term time, or by one of the judges in vacation, and the recognizance to be taken thereupon shall be returned and filed in the said court, and shall continue in force until such person shall have been acquitted, or in case of conviction shall have received judgment. *s.* 41.

Where persons are detained for want of bail, the prosecutor may cause a copy of the indictment to be delivered to the party or the gaoler, with notice that, unless an appearance, &c. be entered within a limited time, they will be entered, in which case certain proceedings shall be had.

And where any person by virtue of such warrant and commitment shall be committed and detained in any gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information, to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery, cause an appearance and also a plea or demurrer to be entered, an appearance and the plea of not guilty will be entered thereto, in the name of such person; and in case he shall thereupon, for the said space of eight days after such delivery, neglect to cause an appearance, and also a plea or demurrer to be entered, it shall be lawful for the prosecutor, upon affidavit made and filed of a delivery of a copy of such indictment or information, with such notice, to be made before any judge or commissioner authorized to take affidavits, to cause an appearance and the plea of not guilty to be entered for such person, and such proceedings shall be had thereupon, as if the defendant had appeared and pleaded not guilty, and if upon the trial the defendant shall be acquitted, it shall be lawful for the judge to order that such defendant shall be discharged out of custody. *s.* 41.

Where offences may be tried.

And all offences committed contrary to this or any other act hereafter to be passed, or of any order as aforesaid, notified by proclamation, or published in the *London Gazette*, whether committed within the body of any county or upon the highseas or elsewhere, may be tried, heard, and determined in any county within *England* or *Scotland*, or in the proper courts of the Isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, respectively. *s.* 42.

*Players.* *See* THEATRES, &c.

*Plantations.* Destroying of. *See* FELONY (*within Clergy*, § *Trees and Shrubs*).

*Plants.* Destroying or stealing the same *See same Title.*

*Pledging of Goods.* *See* PAWNBROKERS.

*Poisoning.* *See* HOMICIDE.
*Polygamy.* *See* FELONY (*within Clergy*).

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## POOR.

BEFORE the Reformation there was no regular provision for the poor. For although it appears by the *Mirrour*, *c.* 1. *s.* 3, that by the common law the poor were to be *sustained by parsons, rectors of the church, and the parishioners, so that none of them die for default of sustenance*; yet it seems that they were in a great measure left to such relief as the humanity of their neighbours would afford them. 1 *Burrow's Rep.* 450, 451. 1 *Black. Com.* 359.

And in this respect there seemed to be a pious contention among our ancestors who should first bring their offering to the church; and the bishop, to whom the charge of souls was committed, was for that reason thought the fittest person to be intrusted with the administration of those oblations. *Shaw's Par. L. c.* 32. *s.* 3. 2 *Shaw's Jus.* 1.

By these and other superabundant offerings at altars, sepulchres, and shrines of martyrs, the church became extremely rich, and several monasteries, priories, religious houses, and hospitals, were by these means founded and plentifully endowed; at which were supported and fed a very numerous and idle poor, whose sustenance depended upon what was daily distributed in alms at the gates of such religious houses. *Shaw's Par. L. c.* 32. *s.* 4. 2 *Shaw's Jus.* 1. 1 *Black. Com.* 359. *Cowper's Rep.* 560.

But upon the total dissolution of these, the inconvenience of thus encouraging the poor in habits of indolence and beggary was quickly felt throughout the kingdom; and abundance of statutes were made in the reign of king *Henry* VIII. and his children, for providing for the poor and impotent *, which the preambles to some of them recite, had of late years greatly increased. 1 *Black. Com.* 360.

These poor were principally of two sorts, sick and impotent, and therefore unable to work; idle and sturdy, and therefore able, but not willing to exercise any honest employment. To

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* See to this purpose 22 *Hen.* 8. *c.* 12. 27 *Hen.* 8. *c.* 25. 1 *Ed.* 6. *c.* 3. 3 & 4 *Ed.* 6. *c.* 16. 5 & 6 *Ed.* 6. *c.* 2. 2 & 3 *Phil.* & *Mar.* *c.* 5. 5 *Eliz. c.* 3. 14 *Eliz. c.* 4. 18 *Eliz. c.* 5. 35 *Eliz. c.* 7. *s.* 25. 39 *Eliz. c.* 3.

provide in some measure for both of these in and about the metropolis, *Edward* the sixth founded three royal hospitals, *Christ's* and *St. Thomas's*, for the relief of the impotent through infancy or sickness; and *Bridewell*, for the punishment and employment of the vigorous and idle: but these were far from being sufficient for the care of the poor throughout the kingdom at large, and therefore, after many other fruitless experiments, by stat. 43 *Eliz.* c. 2. OVERSEERS OF THE POOR were appointed in every parish. 1 *Black. Com.* 360.

From this statute the present system of poor laws hath arisen, and it is designed in this place to treat thereof in the following order:

I. *Overseers of the poor.*

II. *Poor's rate.*

III. *Relief and ordering of the poor.*

IV. *Overseers accounts.*

V. *Indemnity of overseers in the due execution of their office.*

VI. *Punishment of overseers for neglect of duty and for misbehaviour.*

VII. *Relief, and ordering of the poor in incorporated districts, under stat.* 22 Geo. 3. c. 83.

VIII. *Precedents of proceedings under the poor laws.*

*Note*; The law concerning SETTLEMENTS AND REMOVALS is treated of in vol. iv. under the general title SETTLEMENTS AND REMOVALS.

## I. *Overseers of the poor.*

i. *The manner and form of appointing overseers.*
ii. *What persons are liable to be appointed overseers.*
iii. *Appeal against the order of appointment.*

## 1. *The manner and form of appointing overseers.*

By 43 *Eliz.* c. 2, "the churchwardens * of every parish, and 'four, three, or two substantial householders there, as shall be 'thought meet, having respect to the proportion and greatness of 'the parish, to be nominated yearly in *Easter* week, or within 'one month after *Easter*, under the hand and seal of two or 'more justices of the peace in the same county (1 Qu.) dwel- 'ling in or near the same parish or division, shall be called 'OVERSEERS OF THE POOR of the same parish.' *s.* 1.

Overseers of parishes to be appointed in Easter week, or within one month after.

And by 13 & 14 *Car.* 2. c. 12, (after reciting, that the inhabitants of *Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland*, the bishoprick of *Durham, Cumberland*, and *Westmoreland*, and many other counties † in *England* and *Wales*, by reason of the largeness of the parishes, cannot reap the benefit of the said act of 43 *Eliz.*) it is enacted, that 'there shall 'be yearly chosen and appointed, according to the directions of '43 *Eliz.* c. 2. two or more overseers within every of the said 'townships or villages respectively. *s.* 21.

Overseers of townships and villages also to be appointed.

'Also by the said act 43 *Eliz.* c. 2. the mayors, bailiffs, or 'other head officers of every town and place corporate and city, 'being justices of peace, shall have the same authority within 'their jurisdictions as justices of peace of the county, and no 'other justices to meddle there. And every alderman of *Lon- 'don*, within his ward, may do so much as is appointed to be 'done by one or two justices. *s.* 8.

Head officers in corporations authorized to act.

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* Anciently the churchwardens were the sole overseers of the poor and it lay wholly on them, under the direction of the minister, to take care of all such as were in want of their parish, and provide for their relief; but since the passing of the stat. 43 *Eliz.* c. 2, the overseers, who are thereby superadded, have in a manner superseded the churchwardens, care in this particular. However, *the churchwardens are still, by the common law, overseers of the poor in every parish* **, and the said act joins them in equal power with the other overseers thereby appointed, in all the duties relating to that office: but they having other business besides, such as to take care of the church and the like, the whole management of the poor is now usually left to the overseers, and the churchwardens by the custom of most parishes are allowed no further to be troubled therewith than of their good will and liking they think fit. *Shaw's Par. L.* c. 46. s. 1.

† *And many other counties*] In the case of *Skillington* v. *Norton, Tr.* 27 *Car.* 2, the above statute of 13 & 14 *Car.* 2. c. 12, was held not to extend to any other counties than those expressly named. 2 *Leving*, 142.

But in the case of *Dolting Stokeland, Hil.* 11 *Ann.* it was determined otherwise; for in that case—By *Parker*, Ch. J. (who delivered the opi-

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** Therefore it is agreed that they need not be formally appointed to the office of overseer.

Parish extending into more counties than one.

'And if any parish extend into more counties than one, or 'part lie within the liberties of any city or town corporate, and 'part without, then, as well the justices of every county as the 'head officers of such city or place corporate, shall deal only in 'so much of the parish as lieth within their liberties; and every 'of them within their limits to execute the ordinances concern-'ing the nomination of overseers; and yet, nevertheless, the 'said churchwardens and overseers of the parishes that do ex-'tend into such several limits, shall without dividing themselves 'execute their office in all places within the said parish, in all 'things to them belonging. *s.* 9.

Penalty on justices not appointing overseers.

'And if in any place there happen to be no nomination of 'overseers, every justice of peace, dwelling within the divi-'sion *, and every mayor or alderman, and head officer, of any 'city or place corporate, where such default shall happen, shall 'forfeit 5*l.* towards the relief of the poor, to be levied by war-'rant from the sessions.' s. 10.

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nion of the whole court), there has been a question, Whether this act be general, or only extends to those counties that are named by the act? and "we all take it to be general; the words are expressly so, "and many other counties in *England* and *Wales*." Now if it was to extend to only those that are named in the act, it would not extend to one county in *Wales*; for none of the counties named are in *Wales*; so that the clause must be taken generally." *Foley*, 98.

And in the case of *Clifton* v. *Churcham*, *Hil.* 12 *Geo.* 2, it was adjudged, that 'the act extends to all counties, being equally beneficial to all, and that the counties there specified are mentioned only as instances;' and *Lee* Ch. J. said, that so it had been determined upon great debate and consideration in the above case of *Dolting* v. *Stokeland*, which case hath been ever since adhered to. *Andrews*, 324.

* By some ancient statutes relating to the poor, especially 22 *Hen.* 8. *c.* 12, the justices were required to divide themselves for the better execution of the powers vested in them by such statutes; and it is said that from thence originated the term *division* in the sense here used†: but as there is no statute now in force which requires them to *divide*; it is the opinion of some that there is no *division* in the strict sense and meaning of the expression at the present day, and that therefore the penalty inflicted in this clause cannot now be levied on any particular justice, the justices at large being equally concerned. However this opinion seems to be very questionable: for as parishes were considered and spoken of by writers as *divisions*, in reference to *ecclesiastical* affairs, long before they were taken notice of as such in *civil* matters; it may very reasonably be contended, that the words *parish* and *division* are to be taken in this place as synonymous; and if so, it does not appear, but that the above penalty may still be inflicted on the justices *dwelling within the division*, if they willingly neglect or refuse to make an appointment according to the statute.

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† For the term *division* is known at common law only, as respecting the civil division of counties into hundreds.

This clause is to be considered as a command to the justices to make the appointment within the time, under the penalty; and if they do not do it, the court of *King's Bench* will grant a mandamus to oblige them to make the appointment: per *Lee* Ch. J. in the case of the *King* v. *Sparrow*. See *p.* 682 *infra*.

Overseer dying, removing or becoming insolvent.

And by 17 *Geo.* 2. c. 38, 'if any such overseer shall die, or 'remove from the place for which he was appointed, or become 'insolvent before the expiration of his office, on oath thereof 'made, it shall be lawful for two justices of the peace to appoint 'another overseer in his stead: who shall continue in office until new overseers are appointed.' *s.* 3.

By whom to be appointed.

The overseers of the poor must be appointed by two justices. *Carthew*, 161. *Foley*, 8. 16 1 *Sess. Cas.* 141. 324.

But although the statute says, justices *in or near the same parish or division*, yet these words are only *directory*, and not *restrictive* or *qualificatory*, for there may be no justices of the division; and if a justice lives twenty miles off, *and there is none nearer*, he must be said to be *near*; it seems therefore, that any justices of the county may act, *if there be none nearer*, the expression *in or near*, which is loose and indefinite, appearing to intend no more than *the next*. *Salkeld*, 473. 480. 12 *Mod. Rep.* 138. 546. 2 *Sess. Cas.* 140. 1 *Burrow's Rep.* 446.

The overseers must be appointed *under the hands and seals* of two justices, as the statute requires; and no parol evidence of such appointment can be given, but the same must be produced, in order that it may appear whether it be a sufficient appointment. *K.* v. *Arnold*, *Tr.* 4 *Geo.* 1. 1 *Str. Rep.* 101.

And the two justices must sign and seal the appointment in the presence of each other; for the appointment of overseers is a judicial and not a ministerial act, and the justices must both act together and exercise their discretion on the subject by conferring with each other *. *K.* v. *Forrest and others*, *Hil.* 29 *Geo.* 3. 3 *Term Rep.* 38.

But it seems that such an appointment, signed by two justices separately, is not therefore *absolutely void*, but *voidable* only by appealing to the sessions. *See the case of the K.* v. *Inhabitants of Scotfold*, *Ea. Term*, 32 *Geo.* 3. 4 *Term Rep.* 595.

And after an appointment of four overseers for a parish by the magistrates at one meeting, they are *functi officio*, and no other magistrates can discharge any of the persons so appointed,

* In this case one justice had signed a warrant, appointing three overseers, which he sent to three other justices to sign, who separately signed the same at their respective houses, no two of them signing it in the presence of each other.

and appoint another: but the party must appeal to the sessions to get his discharge; and this objection to the second appointment may be taken upon its removal there by certiorari, by a motion to quash the same—this was decided in *the K.* v. *Great Marlow, Hil. Ter.* 42 *Geo.* 3. which case was as follows: Sir W.C. and the Rev. J. P. two justices of the peace, on the 18th of April appointed J. Webb, J. Johnson, J. Gosling, and R. J. Oxlande, to be overseers of the poor; on the 2d of May following J. Gosling appeared before J. P. one of the magistrates first mentioned, and J. W. Esq. another magistrate, and claimed to be exempt from serving; these last magistrates conceiving it right to exempt him, did accordingly do so; and on the 25th of the same month of May they signed another instrument purporting to be a warrant appointing J. Field overseer of the said parish, but the same was not signed in the presence of each other. This warrant of appointment having been removed into the court of King's Bench, by certiorari, it was moved to quash the same. By the Court: When this matter was first mentioned, it was thought that the objections should have been made on appeal, and that the court could not hear affidavits in support of objections against appointments of magistrates, which upon the face of them are good; but upon enquiry, it appears that the objection to looking into affidavits was never taken before the appointment, therefore may be brought hither by certiorari in the first instance, for the purpose of being quashed. Then as to the merits; upon looking into the affidavits, the appointment appears to be bad upon the grounds, 1. when the first appointment was made on the 18th of April of four overseers, all further jurisdiction of the magistrates in that respect was at an end: it was not competent for other magistrates to make a new appointment in cases not authorized by the statute; 2. both the magistrates ought to have been present when the appointment was executed, instead of which many days elapsed between the signature of the one and the other, and they were not together when the act was done: this is essentially necessary to be observed, and much inconvenience may ensue from a contrary rule. Therefore the appointment appearing to have been illegally made, must be quashed. 2 *East's Rep.* 244.

Jurisdiction of Sessions.

*The sessions* have no original jurisdiction to appoint overseers, they can only quash or confirm the appointment of the two justices on appeal:—therefore in the case of the *K.* v. *Flag* and *Chilmerton, Mic.* 13 *Geo.* 1. where *the sessions* had appointed overseers, the court of *King's Bench* quashed the order, because the sessions have no original jurisdiction in that case by the statute. 1 *Sess. Cas.* 260. *Fol.* 7.

Number of overseers to be appointed.

In the case of the *King* v. *Harman, Ea.* 12 *Geo.* 2. where five overseers had been appointed, the court inclined to the opinion that the justices could not appoint more than four overseers for one parish or township: as the statute 43 *Eliz. c.* 2. beginning with the number *four*, shewed the extent to which

the legislature intended they should go, and the words being affirmative, implied a negative that they should not appoint more: but the court gave *no* determination on the validity of the appointment. 2 *Sess. Cas.* 148. 1 *Bott. Const's ed.* 13. 1 *Burrow's Rep.* 446.

However, afterwards in the case of the *King* v. *Loxdale*, *Hil.* 31 *Geo.* 2. it was solemnly determined by the court, that an order of justices appointing *more than four* overseers of one parish is bad:—in this case it was moved to quash an order of justices appointing *five* overseers, upon the objection that this was not warranted by the statute 43 *Eliz.* By lord *Mansfield*, Ch. J. justices of peace have no other power to appoint overseers, but under the special authority given them by act of parliament. Therefore this special authority must be strictly pursued, and *cannot be exceeded by them.* The question here is upon the meaning and intention of the legislature, in this power given the justices to appoint overseers.—Where there are different statutes *in pari materia*, though made at different times, or even expired and not referring to each other, they shall be taken and construed together, as one system, and as explanatory of each other. Thus I consider all the statutes providing for the poor, as one system relating to that subject. Now 39 *Eliz.* c. 3. (*an act not now in force*) is the first of these: that act says, "that the churchwardens and four substantial householders," (without any latitude whatsoever for a greater number.) And more than four could not have been appointed under it: for the number the legislature had named, could not be altered.—That act of parliament of the 39 *Eliz.* was continued by the very act of 43 *Eliz. c.* 2. *s.* 18, till the following *Easter*, when that of 43 *Eliz. c.* 2. was to take place: so that the legislature had it before them, and even under particular consideration. And the act of 39 *Eliz.* is expressly fixed to four. Parishes were then not so populous as they are now. And this act of 43 *Eliz. c.* 2. gives power to lessen the number to three or two, according to the size of the parish: but they had no notion of extending it to a greater number. And there is some weight in the circumstance of the numbers descending from four downwards, and not ascending upwards.—As to the 13 & 14 *Car.* 2. *c.* 12. *s.* 21*, I think that statute ought to be taken into consideration, in construing this of 43 *Eliz. c.* 2. but I do not see that the justices may appoint more than four overseers of the poor, in townships and villages in those large parishes. It is expressly directed by that statute of 13 & 14 *Car.* 2. *c.* 12. *s.* 21, that such choice and appointment shall be (and the construction of it must be guided according to its own reference) according to the rules and directions men-

* See p. 673 supra.

tioned in the statute of 43 *Eliz.* And neither any judicial determination nor usage support this conceit, that they can appoint more than four in these townships and villages in the large parishes. Then the act of parliament in 1740, relating to *St. Martin's* and the overseers of that parish, and which extends their number, shews the construction put by the legislature themselves upon the 43 *Eliz.* on this head; and excepts this very large parish of *St. Martin* out of it. And yet even this very act restrains the number to nine: which shews that the justices had no power *under the* 43 Eliz. *to appoint what number they pleased.* For it would be a strange thing to limit the number in a very large parish; and leave it at large in smaller ones. The precise number is not an immaterial thing; either to the officers of the parish, or to the persons for whom they are trustees. Upon themselves 'tis a burden which, by this practice, would come round the sooner. And in respect to the parish for whom they are trustees, a great number may not do business better than a smaller; and it would be attended with more expense. Also with regard to the church-wardens who are joined in authority with them—they are only two, or (by custom) four church-wardens in each parish. Therefore a greater number of overseers being appointed, necessarily alters the balance of the majority amongst them, and makes an essential difference in the proportion between one and the other. And there is no number to stop at, if the justices exceed four: they may go on without any boundary, unless the specified number of four be the limit. Therefore I think this appointment of more than four is not warranted by 43 *Eliz.* upon the true construction of that statute. *Dennison*, J. concurred in opinion, that this appointment ought to be quashed: and he did not think that this court ever had any doubt about the legal determination of this question. The point of the validity of an order appointing more than four, is a new case, but not a difficult one at all. This act of 43 *Eliz.* is, as one may call it, the *magna charta* of the poor. And it can never be called directory as to the number of the overseers appointed by it. Certainly, the legislature had the number which stood fixed by 39 *Eliz.* in their view, and under their consideration, when they made the 43 *Eliz.* And can it be imagined that the justices have a jurisdiction to appoint more? Clearly they have not. Nobody ever thought it discretionary as to the number. And there is no reason in the earth for us to break the boundary which is fixed. *Foster* J. declared the very same thing; and that he never had any doubt in point of law: his only doubt was in point of discretion; as he then supposed the usage to be otherwise than it now appeared to be*. When the statute of

* The court misled by assertions, "that there had been a usage to appoint more overseers than four," for fear of inconvenience, had

43 *Eliz.* was made, there were very few large parishes in towns and cities: therefore, at that time, the parliament thought four overseers sufficient. Under 39 *Eliz.* I take it, the justices could not have gone below four. For, it being a special power given by statute, must be strictly pursued. And therefore, in the 43 *Eliz.* the legislature, though they took the act of the 39th for their plan, and followed it in almost every instance; yet, seeing the inconveniences in small parishes, departed from it with regard to the number of overseers; which they reduced, at the discretion of the justices; *but did not increase in any event;* probably, because they thought four overseers, with the church-wardens, sufficient for the largest parish (as they certainly are) though too many for the small ones. If it be now become convenient, the application must be to parliament. However, he declared that he did not think that business is best done by a multitude of hands: and in fact, where the number that are to do it is large, they always delegate the actual transaction of it to a few. No parish ever applied for a mandamus, commanding the justices to appoint more than four. The general sense of mankind was against it. This is an authority founded upon a positive law; and therefore must be pursued. *Wilmot* J. declared (as his brethren Mr. J. *Dennison* and Mr. J. *Foster* had done) that he never had had the least doubt, but upon the apprehension of an usage of the large parishes, for many years back, to appoint more than four: but this apprehension is now vanished: and therefore the usage (as it now comes out) confirms the true construction of the act. The instances of greater numbers appear to be only three: and one of them (*St. Andrew's Holborn*) is considered *as three vills*, under 13 & 14 *Car.* 2.; and *St. Martin's* (another of them) is under a new act of parliament made on purpose. I think this order cannot be supported. There were provisions for the poor at common law, though it does not fully appear what they were. The first regular provision, however, is by 39 *Eliz.* By this statute, and by 43 *Eliz.* the legislature had four overseers to the former parochial administration*. And no one can doubt that the number is essential; and cannot, by the rule of law, be exceeded. For powers given by a positive law, or even by deed, to a certain number of persons, can never be exceeded in the article of number. On the

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avoided determining the question in the case of the *King* v. *Harmon*, after it had depended six years, in hopes that the legislature would make some provisions for what was past, as well as for the future, and upon the same apprehension the court had hitherto postponed the determination of this case.—Upon enquiry, however, it turned out that the *usage* rather supposed that the appointment could not legally exceed four. 1 *Burrow's Rep.* 445, 446.

* Viz. the churchwardens.

other hand, if it had rested singly upon 39 *Eliz.* the number of four could not have been lessened. But then indeed the 43 *Eliz.* relaxes this precise number of four, as to small parishes; but still continues it as to all greater. And where the makers of the act intend an indefinite number, they expressly say so. For the 19th section relating to the island of *Fowlness*, converts the whole district into one parish for this purpose* ; and directs an indefinite number of overseers for that place. Which clause alone would satisfy me, as to the sense of the legislature. And they might as easily have said, so many as should seem necessary, as precisely fix it to four, if they had meant it so. And it is (as has been observed) an office which is burdensome upon the persons appointed: and business is not better done by great numbers of men, than by a few. And the parish have as great security from four, as from more. Upon the whole, he entirely concurred that the order could not be supported, 1 *Burrow's Rep.* 446.

But although in the construction of this act, not more than *four*, nor less than *two* overseers are to be appointed, yet as all the overseers need not be appointed by the same instrument, the court will not quash an order appointing one overseer, for it does not necessarily appear to be bad, as other overseers may have been appointed by other orders. *The King* v. *Besland,* 19 *Geo.* 2. 1 *Bott. Const's ed.* 15. 1 *Wils.* 128. 1 *Burrow's Rep.* 446.

Therefore in the case of *the King* v. *Morris, Hil. Ter.* 32 *Geo.* 3, two justices appointed the defendant, *being a substantial householder of the parish of* Llangendeirn *in the county of* Carmarthen, *to be overseer of the poor of the hamlet of* Velindre *in the said parish.* He appealed to the next quarter sessions, where the appointment was confirmed with costs, stating it to be *on the hearing of the appeal, touching the appointment of* R. Morris *as* ONE OF THE OVERSEERS *of the poor of the hamlet of* Velindre. To this order of appointment it was among other things objected, that it was an appointment of one overseer only, whereas more than four or less than two could not be appoint-

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* 'Whereas the island of Fowlness in Essex is environed with the 'sea, and hath a chapel of ease for the inhabitants thereof; and yet 'is in no parish, but the lands in the same are situated within divers 'parishes, far distant from the said islands:' It is therefore enacted, that the justices of *Essex* shall appoint inhabitants within the island of *Fowlness*, to be overseers of the poor in the island, as if the same island were a parish; in consideration whereof neither the said inhabitants shall be compelled to contribute towards the relief of the poor of those parishes wherein their houses or lands within the said island are situated, other than for the relief of the poor of the island; neither shall the other inhabitants of the parishes wherein such houses or lands are situated, be compelled to contribute to the relief of the poor within the said island. 43 *Eliz. c.* 2. *s.* 18, 19.

ed, and for this was cited *the K.* v. *Loxdale.* But by lord *Kenyon*, Ch. J. this court has invariably made a distinction between *orders of justices* and *convictions*, and said, that every thing is to be intended in support of the former. As to the objection, that this is only an appointment of one overseer, in support of which *K.* v. *Loxdale* was cited; I well remember that that case underwent a great deal of discussion in *Westminster-hall*; to the determination of that case I subscribe my opinion that there must be four, three, or two officers appointed under the statute 43 *Eliz.* c. 2. But *it never has been determined, that they must be all appointed by one instrument.* And we are not left to conjecture that no other person was appointed overseer of this place; for it appears on the order of sessions, that this was an appeal of "one of the overseers of *Velindre.*" 4 *Ter. Rep.* 550.

In *the K.* v. *Clerkenwell*, the whole court seemed to think the appointment of overseers of the poor *on a Sunday* to be a good appointment, for it may be in *Easter* week; and this is the first day of the week*. *Foley*, 4. At what time to be appointed.

But it seems that an appointment made on a *Sunday* is *prima facie* clandestine and bad; for in the case of the *K.* v. *Butler*, *Ea.* 8 *Geo.* 3 where the appointment of overseers was on a *Sunday*, and it was alledged that this appointment being made at one o'clock in the morning was clandestine and fraudulent. Lord *Mansfield* asked, Is there any determination that an appointment on *Sunday* is good? *Aston* J. I have a note of *the K.* v. *Clerkenwell*, that an appointment made on *Easter-Sunday* shall be good, *it being a work of charity* †.—Lord *Mansfield*. Notwithstanding that reason, I should think that an appointment on a *Sunday* is *prima facie* clandestine and bad. 1 *Black. Rep.* 649.

And in *the K.* v. *the Overseers of Bridgewater*, *Trin.* 14 *Geo.* 3, upon shewing cause why several appointments of overseers should not be quashed, the case appeared to be a contest between two adverse sets of borough justices. Each set met before midnight of *Easter-eve* and each began making their appointments of overseers the instant the clock struck twelve, and so kept on renewing the same appointments for an hour or two. But one set of them made a fresh appointment at eight o'clock on the *Sunday* morning, supposing that there would be a contest concerning the priority of those appointments which were made soon after midnight, and perhaps all of them bad. —Lord *Mansfield*: The conduct of the justices in this case is a shameful prostitution and abuse of their office for election

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* But the appointment was quashed on another ground, *viz.* because it did not state them to be *substantial householders.*

† See title SABBATH in vol. iv.

purposes; and I wish any person could be found who would undertake to prosecute both parties. It would have been more for the interest of either side to have waited for a legal appointment on the *Monday*. *I do not know that there is any authority which says that an appointment made on a* Sunday *is good*; *but it certainly is not a day for such purposes as these*; and therefore I will not give my sanction to any of the appointments. Let all the appointments be set aside, and a *mandamus* be directed to the justices to make a new appointment; and let the mayor give two days notice of the time and place of meeting for such new appointments.—The three other judges concurred. *Cowper's Rep.* 139.

Yet it seems if the appointment be made *bona fide*, and without fraud, even on a *Sunday*, it is good;—for in the case of the *K.* v. *Merchant and Allen*, *Ea.* 9 *Geo.* 3. where six appointments were made by two sets of justices, and it appeared that two had been made on *Easter Sunday*, two on *Monday*, and two on *Tuesday*, the usual day for appointing overseers: The Court seeing no reason to presume that those made by the defendants were subsequent to those made by the other justices, declared that if their appointment made on *Sunday bona fide*, was prior to that made by the others on the same day, it was good; therefore an affidavit of priority was necessary to induce the court to quash either. 1 *Bott*, *Const's ed.* 21.

Also, although the statute directs the appointment to be made in *Easter* week or within a month after, yet if it is not made within that period, an appointment at any time afterwards will be good;—for in the case of *the K.* v. *Sparrow*, *Tr.* 13 *Geo.* 2. a mandamus issued *teste* 1st June, directing the justices of *Ipswich* to nominate overseers of the poor, to which they returned, that they had in obedience to such writ made an appointment; and that being removed by *certiorari*, appeared to bear date 13th June; it was objected, in order to quash the mandamus and appointment, that it appeared that the month after *Easter*, within which time the statute directs that overseers shall be appointed, was expired. The Question was, *whether this order, thus appearing to be above a month after* Easter, *was to be considered as a void appointment?* And all the Court held the appointment good. And per *Lee* Ch. J. who delivered the opinion of the court, We are obliged to take notice when *Easter* was. As to the exception in respect to the statute, directing the appointment to be within such a time under a penalty; that is to be considered as the means to oblige the justices to make the appointment within the time; *but if an act be done beyond the time in which a thing is to be done by statute under a penalty, the act is not erroneous*, but the party neglecting to do it according to the statute, will be liable to the penalty. The act of parliament says, they shall forfeit 5*l.* a piece for the want of nomination; but the act doth not say they

shall not do it any other time. And the best way of advancing the remedy precribed by this statute will be, by considering it as directory to the justices, and not *restrictive* in point of time. 2 *Strange's Rep.* 1123. 1 *Bott Const's ed.* 17.

And when overseers are appointed, they are to continue until the ensuing *Easter*, and *the year* mentioned in the order of appointment is to be construed *the overseer's year*, and not otherwise:—thus in the last case it was excepted, that the overseers were appointed only *for the present year*. But *Lee*, Ch. J. in delivering the opinion of the court said, the construction is, that when they are appointed after the time, *they are to continue until the next Easter*, and then others are to be appointed; and therefore, though an appointment be not made within the time mentioned within the act, yet when *Easter* comes, what is directed in a subsequent clause in the act of parliament (viz. accounting within four days after their year, and appointment of others) will take place. 1 *Bott. Const's ed. p.* 20.

So where overseers were appointed for *one whole year*, though it was objected that *Easter* being moveable, they may be in *above* a year or *less*: THE COURT said it was well enough, and if they should quash it, there is no appointment of this kind that would stand. *Foley*, 5. 1 *Bott. Const's ed. p.* 20.

So also an appointment on *Easter Wednesday*, 1766, *for this present year*, 1766, was held good, for by lord *Mansfield*, it plainly means the overseer's year, and that is from *Easter* 1765 to *Easter* 1766: to understand it to be the year of our Lord would make it bad; and it cannot be construed so, as it manifestly means quite another sort of a year.—*Wilmot* J. was silent being a parishioner. *Yates* J. was absent. *Aston* J. concurred with lord *Mansfield*, and said the construction may be taken two ways, one of them for making the order good, and the other making it bad; he therefore should take it in a sense which would make it good. *The K.* v. *Helling*, *Ea.* 6 *Geo.* 3. 2 *Burrow's Rep.* 1901:—*The same point was also determined in the K.* v. *Burder*, Tr. 32 Geo. 3. *Nolan's Rep.* 111. 4 *Term Rep.* 778.

Also in *the K.* v. *Stubbs*, *Ea.* 28 *Geo.* 3, where the appointment was on the 6th *October for one year next ensuing the date thereof*, the court on the authority of *the K.* v. *Sparrow*, held it to be good, as it might be taken to mean only the overseer's year. 2 *Term Rep.* 395.

The stat. 43 *Eliz.* c. 2, directs overseers to be appointed *in every parish*, and the 13 & 14 *Car.* 2, *in townships and villages**. For what place to be appointed.

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* A PARISH is that circuit of ground which is committed to the charge of one parson, or vicar, or other minister having cure of souls therein. 1 *Black. Com.* 112.

And it has been determined that the last clause in 13 & 14 *Car.* 2. *s.* 21. extends to towns and villages *in extraparochial places*, as well as within parishes, for this statute is of *towns* and villages in *counties*, not in parishes, and though there be no officers appointed in extraparochial places, yet the justices ought to do it upon complaint. *Anonymous case*, 16 *Viner's Abr. tit. Poor*, 421.

So in *Dolting* v. *Stokeland*, *Hil.* 11 *Ann.* which seems to be the same case, *Parker* Ch. J. said, that all the court were of opinion that the statute extended to *extraparochial places*, and that if there were no officers in these extraparochial places, in such cases the persons who are aggrieved ought to com-

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And it is described to be a precinct within a diocese, comprehending one or more vills or a lesser territory; for several vills may be contained in the same parish. *Comyns's Dig. tit. Par.* (B 1).

But it shall not be intended to contain more than one vill, unless the contrary be shewn. 1 *Ld. Raym.* 22.

And it is to be observed, that land shall not be with any parish unless by prescription or act of parliament, for where lands were never united to any parish, they continue to this day EXTRAPAROCHIAL: nevertheless, an extraparochial place shall be within a county. *Stiles*, 137. *Comyns's Dig. tit. Par.* (B 2). *Skinner*, 685. 1 *Black. Com.* 116.

TOWNS, TOWNSHIPS, OR VILLS, are of the same signification in law. 1 *Black. Com.* 115.

And by intendment of law every parish is a vill, unless it be shewn to the contrary. *Co. Litt.* 125, b. (f).

These contained anciently, each, ten families, upon which account they are sometimes called tithings. *Wood's Inst.* 3.

And, it is said, that it cannot be accounted in law a vill, unless it hath, or had a parochial church and celebration of divine service, sacraments, and burials. But this, according to *Blackstone*, is rather an ecclesiastical than a civil distinction. *Co. Litt.* 115. b.

But if a town is decayed, so that it hath no houses left, yet it continues a vill in law. *Co. Litt.* 115. b.

And there ought to be in every town, a petty constable or tithing man, or both. *Wood's Inst.* 3. *Burrow's Set. Cas. No.* 11. 31. 2 *Strange*, 1004. 1071.

And wherever there is a constable there is a township, per *Buller* J. in *the K.* v. *Sir Watts Horton*, infra. 3 *Term Rep.* 374.

The word *town* or *vill* is, however, now become a generical term, comprehending under it the several species of cities, boroughs and common towns; these contained originally each but one parish and one tithing; though many of them now, by the encrease of the inhabitants, are divided into several parishes and tithings. 1 *Black. Com.* 116. But see the cases of the *King* v. *Denham*, and the *King* v. *Grafton*, infra, as to the general notion of vills.

*Note.* Originally the kingdom in reference to civil matters was divided into *vils* only, and *parishes* were divisions only, in reference only, to ecclesiastical affairs, and *the common law* took no notice of them; however, in process of time, parishes became divisions, taken notice of in reference to civil matters. *Freem. Rep.* 228.

plain * to the justices, and they ought to appoint officers; and the justices ought to appoint overseers of the poor as they do in other places, pursuant to the act of 43 *Eliz. c.* 2. *Foley*, 98. *Fort.* 219.

Also in *the K.* v. *Rufford*, *Ea.* 8 *Geo.* 1, a mandamus was directed to the justices of the county of *Nottingham*, reciting, that there are within the vill of *Rufford* divers substantial freeholders able to contribute to the maintenance of the poor; that there are no churchwardens or overseers, to make a rate; and that there are poor unprovided for; and therefore it commanded them to appoint overseers. They return, that the vill of *Rufford* is part of no parish, but hath, time out of mind, been *extraparochial*, without church, chapel, or parochial rights; that there never had been overseers, therefore they cannot appoint.—And after argument and consideration, THE COURT was of opinion, that the powers given by the 43 *Eliz. c.* 2, to be executed in parishes, were by the 13 & 14 *Car.* 2. *c.* 12, extended to all townships and villages, *parochial or extraparochial*; and consequently overseers might be appointed in this case; and for such purpose *a peremptory mandamus* was awarded. 1 *Strange*, 512.

In the same case, reported in 8 *Mod.* 39, it was observed by the court, that most of the forests in *England* are extraparochial, but that they ought to maintain their own poor; that the justices of peace, by the general words, have power to appoint overseers in all parishes, which must extend to extraparochial places as well as all parishes in general; and that no subsequent words should controul the general words in the enacting part.

But though it is now a settled point, that the justices may appoint overseers in extraparochial places, yet such place must come under the notion of a town or village; and it is difficult to define exactly what is a township or village; this must be left to the judgment of the court, upon the circumstances of the case stated: and in this case, viz. *The K.* v. *Denham*, *Ea.* 8 *Geo.* 2,

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* If the justices upon such complaint, refuse, or neglect to appoint overseers, the court of *King's Bench* will, upon affidavit thereof, grant a writ of mandamus, requiring them to make such appointment. *Foley*, 101.

But on an application for a mandamus to appoint overseers for such a place, the court must have a probable ground laid before them, to shew that the place is a vill, or they will not interpose **. The *King* v. *the justices of Bedfordshire*, *Ea.* 22 *Geo.* 3. *Caldecot's Cases*, 167.

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**And it seems that though the affidavit states the strongest circumstances to shew that the place is a vill, yet unless it is expressly stated to be a vill, or that it has been so reputed, the court will not grant the writ.

the question was, whether *Southwark park*, which was stated in the order to be an extraparochial place, consisting of two houses and about 300 acres of land, was such a place as was liable to maintain its own poor. By lord *Hardwicke*: By 43 *Eliz.* c. 2, there must be two overseers of the poor at least; but where the whole parish consists of two houses, the whole parish must be perpetual overseers, and be chosen by nobody, and have jurisdiction over nobody but themselves, if this place may be called a township or village. *Page* J. was also of opinion, that a single house or two houses cannot amount to the notion of a town or village. *Lee* J. observed, that the notion of a village, according to the ancient law, is a tithing consisting of ten families; that according to the modern notion, it is a place that has a constable; that at least it ought to have the reputation of a vill or town; and that lord *Coke's* definition of a vill *ex pluribus mansionibus vicinata*, must mean more than two houses. *Burr. Sett. Cas.* 35.

So in *the K.* v. *Grafton*, *Ea.* 10 *Geo.* 2, where it appeared that the manor of *Grafton* was an extraparochial place, once consisting of a capital mansion-house, and three keeper's lodges in the park adjoining; that the park was afterwards converted into farms, of which there were then five, with each a dwelling house, including the old lodges, and in the occupation of five different tenants, and never had an overseer, till one was appointed for the purpose of making a removal; this was held (*but without defence*) not to be a vill or town. *Burr. Sett. Cas.* 101

But if a mandamus be issued, commanding the justices to nominate and appoint overseers of the poor for a certain village, suggesting that there are several householders and farmers inhabiting and residing within such village, and that there is no overseer thereof; and the justices return that the place is an extraparochial place, and is not, nor ever was, nor has been reputed to be a township or village, and for that cause they cannot appoint; this is conclusive upon the court; and if false, it may be tried on an information. *See the case of the K.* v. *Weblock*, *Tr.* 13 & 14 *Geo.* 2. 1 *Bott. Const's ed.* 24. 2 *Sess. Cas.* 198. 2 *Strange*, 1143.

And the court will not intend the place to be a vill; for in the case of *the K.* v. *Severn and Arnold*, *Ea.* 29 *Geo.* 2, where on a rule to shew cause why the appointment of overseers should not be quashed, it appeared that the defendants were appointed by two justices of the peace overseers of the poor *within the* PRECINCT *of the* TOWER, otherwise called *the parish of* St. Peter's ad Vincula *within his majesty's* Tower of London.—By *Dennison* J. We are of opinion, and the late chief justice did concur in this opinion, that the appointment of the defendants to be overseers of the poor is void. It does expressly appear to be an appointment under the 43 *Eliz.* c. 2, but it is not a good

appointment under the statute, or under the 13 & 14 *Car.* 2. c. 12. The former of these statutes does only give a power of appointing overseers of the poor in parishes; and this power is by the latter statute only extended to townships, and vills: and we are of opinion, that both these statutes, which have in other instances been construed strictly, ought to be so construed in the present case. It has been said, that as the place for which the defendants were appointed overseers is called the parish of *St. Peter's ad Vincula* within his majesty's *Tower of London*, as well as *precinct of the Tower*, it is a parish by reputation; but although a place may be a parish by reputation, and although overseers of the poor may be appointed for such place, yet *an appointment of overseers for such place will be bad, unless the place be therein expressly called a parish.* In the present case the description of the place is, "*precinct within the* Tower;" for the words, "*parish of* St. Peter's ad Vincula *within his majesty's* Tower of London," are under an "*otherwise called*," and the rule in such cases is, that the name or description that precedes an "*otherwise called*," is always to be considered as the true name or description, and not the name or description which follows; for on an indictment, the true name of a man is that which does precede an *alius dictus;* and it will be quashed, if the addition of the person indicted follow the *alius dictus.* It has been said, that although the place of which the defendants were appointed overseers be not a parish, the court may intend that it is a township or vill, within the meaning of the 13 & 14 *Car.* 2. c. 12. But as it is not expressly called a township or vill in the appointment, the court ought not to intend that it is a township or vill, in order to make an appointment good which is not warranted by that statute. *Sayer's Rep.* 278.

But *vill* and *hamlet* are synonymous terms; for in the case of the *K.* v. *Morris*, *Hil.* 33 *Geo.* 3, where two justices had appointed the defendant, being a substantial householder of the parish of *Llangendeirn* in the county of *Carmarthen*, to be overseer of the poor of the HAMLET of *Velindre* in the said parish; and it was among other things objected, that this was not an appointment for a parish under 43 *Eliz.* c. 2, nor for a town or vill under 13 & 14 *Car.* 2, but for *a hamlet only*, which is merely a subdivision of a parish.—Lord *Kenyon*, Ch. J. said, that *vill* and *hamlet* are in common acceptation used as synonymous terms. If indeed the justices at the sessions had stated specially in their order that this was not a vill, we should have been bound to quash the order of appointment; but as it may be a vill, we are now to intend it* for the purpose of supporting the order. 4 *Term Rep.* 550.

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* See *Salk.* 501, where it was determined that if a place be named generally, that place shall be taken to be, and intended a vill.

And where the sessions adjudge the place to be a vill, the court will take the fact to be as found, although there are strong circumstances to shew that it is not a vill.—In the case of the *K.* v. *Ronton Abbey*, *Hil.* 28 *Geo.* 3. where two justices had by an order removed three paupers to the township of the monastery of *Ronton Abbey*, and the sessions on appeal *had adjudged this place to be a vill by reputation*, and confirmed the order of removal, subject *to the opinion of the court of* King's Bench on a special case stated; the court were of opinion, that *as the sessions had adjudged as a fact, that this was a vill by reputation, they were precluded from going into that question.* On which the counsel on both sides said, it was intended to be argued as if the sessions had adjudged it to be a vill by reputation, on the evidence stated in the case. But the court observed, that *the sessions were not to state cases for the purpose of taking the opinion of this court on facts*; and that in this case they had distinctly adjudged this place to be a vill. Therefore, without argument, the rule for quashing the order of sessions was discharged. 2 *Term Rep.* 207.

This point was further confirmed in the case of the K. v. *the Overseers of Eyford*, *Tr.* 25 *Geo.* 3. where a case having upon the suggestion of some doubts by lord *Mansfield*, been sent back to the sessions in order that it might be stated whether the place was a vill by reputation, and it came up with the addition that *it was a vill by reputation*, the court held this to be conclusive. See 1 *Bott. Const's ed.* 588. *Caldecot's Cases* 542.

But the scites and areas of ancient cathedrals, colleges and inns of court, being extraparochial, and not vills either legally or by reputation, are not liable to the appointment of overseers;—this was determined in the case of the K. v. *the Justices of Peterborough*, *Hil.* 23 *Geo.* 3. which was as follows: on a rule for a *mandamus* to appoint overseers of the poor for THE MINSTER in *Peterborough*, it appeared on the affidavits in support of the rule, that it had always been extraparochial, and always had a number of poor belonging thereto; who had been always maintained by the directions of the dean and chapter, and out of some fund belonging to them; that the chapter clerk being applied to to receive a pauper belonging to the said extraparochial place, declared, that he should not take her in, as there were no officers to whom any order of removal could be directed; that application was made to the defendants and two other justices resident in such place to appoint an officer for the same, and to grant their order of removal; that they refused so to do, no officer having at any time before been appointed for such place; that the said extraparochial place contains upwards of forty-six acres of ground, and together with the bishop's and six prebendal houses, twenty-five dwelling-houses at least, exclusive of poor-

houses: and that these houses are inhabited, except in the instance of the bishop and three of the prebendal houses, altogether by strangers to the cathedral, and those generally persons of fortune: that the said twenty-five dwelling-houses contain upwards of 124 persons: that there are also in the said extraparochial place several poor-houses, containing a number of poor, who have by birth, marriage, or servitude, acquired a settlement therein; and who from some fund belonging to the dean and chapter receive a maintenance; that there is an endowed grammar school there, a place for the performance of divine worship, and for the burial of the dead; and that it appears from the register there kept, that there have been marriages, baptisms, and burials had therein. Against the rule it was sworn that THE MINSTER is extraparochial; and is not a township or vill, or was ever so reputed: that there have been poor persons many years resident there; and that within their precincts the dean and chapter are by their statutes required to distribute in charity 20*l.* annually: that it appears by a register, that till the year 1737 no more had been annually so applied, but since that time this sum proving insufficient, a farther sum was expended for their relief; to the diminution of the revenue allotted for the stipends of the officers of the cathedral, the repairs of the fabric, and other contingent expences: that there never was any constable or other civil officer appointed for the said precinct, or any overseer of the poor or churchwarden: nor have the inhabitants ever contributed to the relief of the poor within the precinct, or been called upon so to do.—Lord *Mansfield*: This space comprehends no more than the scite of the cathedral and the area round it; and consequently was in former times within sanctuary, and as such, sacred and inviolable as the church itself. In modern times, to be sure, there is no such thing as sanctuary; but these places have throughout all ages, without interruption, enjoyed those immunities; as *Westminster Abbey* now does, and other places of the like nature. The ancient inns of courts, though not exactly upon this principle, have also at all times been privileged, and a similar exemption was not questioned in a late case, with respect to that part of the court and garden-ground of *Catherine Hall* in the university of *Cambridge* which lay within the old and extraparochial part of that foundation. Would you say that *Christ Church* in *Oxford* is a vill? I am not satisfied from this affidavit, that this place is a vill: and the party applying do not even call it so.—*Buller* J. As the party applying does not venture to assert that this place had ever any civil officer, or was ever reputed to be a vill (the last of which, where the facts of the case do not within some clear principle of law shew the place to be of that denomination, the court has holden to be indispensably necessary for the purpose of

founding an application for a *mandamus**), this case falls within that which has been cited, and the rule must be pronounced accordingly.—*Willes* and *Ashhurst*, Justices, concurring, rule discharged, with costs. *Caldecot's Cases*, 238.

But where the facts stated shew that the place is neither a township or village, the appointment of overseers is bad. Thus in the *King* v. *Showler and Atter*, *Tr.* 3 *Geo.* 3. two justices appointed the defendants overseers of the township or village of *Haugh*. The sessions upon appeal confirmed the appointment, and stated specially, that it appeared to them that the said place called *Haugh* consisted of a capital messuage, in which *Showler* with all his family dwelt, and of two small ancient cottages (all which were let, along with the said capital messuage, and the farm thereunto belonging, to *Showler*) and of another tenement part of the said capital messuage, and all of them inhabited by families; and that one of the cottages was inhabited by *Atter*, who was a day labourer, and his family, another of the said cottages by another day labourer and his family, and the third by a shepherd and his family; and the tenement, part of the said capital messuage, by a poor widow and her five children; all which occupiers of the said cottages and of the said tenements were under-tenants to *Showler*. It was moved to quash these orders, upon the ground that the facts stated did not show that this place was either a township or a village.—THE COURT were clearly and unanimously of opinion that both these orders ought to be discharged; and lord *Mansfield* observed, that by this method a place might be made into a village which in fact was not so, and the inhabitants of it might by this contrivance withdraw themselves from contributing towards the support of the poor of their parish. 3 *Burrow's Rep.* 1391.

Appointment of separate overseers for a parish consisting of several townships.

And the justices cannot appoint overseers under 13 & 14 *Car.* 2. c. 12, for the separate parts of a parish, unless it expressly appears,† that the parish cannot otherwise enjoy the benefits of the 43 *Eliz.* c. 2.;—this was determined in the case

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* See p. 685 supra.

† Though a parish had at no time antecedent to the years 1773 and 1775, had the benefit of the stat. 43 *Eliz.* c. 2, but had always had five overseers of the poor appointed separately, two for one district, two for another, and one for a third; yet two of the districts having agreed in 1773, to act together, to which the third acceded in 1775, and there having been but four overseers since that period, who had been appointed for the whole parish, THE COURT held that such agreement at that time acted upon for 30 years past, was proper evidence to be left to a jury to decide whether the parish under these circumstances could have the benefit of the stat. 43 *Eliz.* and there being no evidence to shew that they could not, opposed to the weight of a usage for 30 years past, a distress levied for a poor rate, made by the overseers conjointly appointed for the whole parish, was held to be legal. *Lane* v. *Cobham* and others, *M. c. Ter.* 46 *Geo.* 3. 7 *Ter. Rep.* 1. 3 *Smith's Rep.* 1.

of the *K.* v. *the Justices of Middlesex, Tr.* 27 & 28 *Geo.* 2. on a rule to shew cause why a *mandamus* should not go to compel the justices to appoint overseers for the township of *Kentish Town.* It appeared by the affidavit, that this parish has always had two overseers; that a rate has been made as one rate for the whole parish; that their appointments have been for the whole parish, but that each overseer had collected and paid within his own division; and if at the end of the year there is a surplus, in either of their hands, it is so much of it paid over into the hands of the other overseer as to make them both equal: they have one work-house; one overseer looks over it one week the other the next. It was objected to this rule, that it would dismember the parish, which has been united to this time: that when 43 *Eliz.* c. 2, was made, and before 13 & 14 *Car.* 2. c. 12, each parish maintained its own poor: that 13 & 14 *Car.* 2. c. 12, was made to accommodate large parishes, where some parts lay at a great distance from others, and it was necessary for their convenience to have an increase of officers. If that statute was to extend to all towns, parishes, and vills, the populous parts of the parishes would be most burthened, and the out-parts of them, and the greatest extents of lands, would be in a great measure excused. To intitle the petitioners to what is now prayed it should be shewn, that they are such a parish as cannot receive the benefit of the 43 *Eliz.* without the aid of 13 & 14 *Car.* 2. It is not sworn, that two overseers are not sufficient: it does not appear that this vill of *Kentish Town* is not a distinct vill or township; so it is not brought within 13 & 14 *Car.* 2.—It was answered, that this writ determines nothing of itself, but is a mean of trying this fact; and that the justices may try the special matters; that this was so populous a parish that it required more attendance than any in the *North.*—The Court: If this be a case that falls within the 13 & 14 *Car.* 2. c. 12 a *mandamus* is a writ of right, and the court must grant it. It has been determined, that this statute is not to be confined to the counties mentioned in the statute.† This has never been considered as a separate parish: the two overseers have been usually appointed for the whole parish. What is declared from the *affidavit* shews that they can do very well under the 43 *Eliz.* c. 2, without calling in aid 13 & 14 *Car.* 2. c. 12; for they have two overseers, and the methods they have used to collect their rates, and to take care of their poor, are very just and reasonable. To bring this within the statute, they must shew this to be a distinct vill. We expected they would have shewn that they had separate overseers, maintained their own poor separately, and had a separate rate.—Rule discharged. 1 *Bott's Const's ed. p.* 35.

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† See note in p. 673, supra.

So in the case of *Peart* v. *Westgarth*, upon shewing cause against a *mandamus* "to appoint four overseers for the whole parish of *Stanhope*, in the county palatine of *Durham*," the question was, *whether the several districts within it were one entire parish*, township, and village, within the intent and meaning of the statutes made for the relief of the poor, and for that purpose have had, *and of right ought to have one joint appointment of overseers* of the poor, for the joint relief and maintenance of the poor in and throughout the parish? or, *whether the said several districts, being divided into six separate constableries, constituted four distinct and separate townships* or villages within the intent and meaning of 13 & 14 *Car.* 2. c. 12. s. 21.? It was by consent of the parties tried upon a feigned issue, at the assizes, and a verdict found for the plaintiff, subject to the opinion of the court upon the following case: viz. from 43 *Eliz.* to 9 *Geo.* 1, the parish had one joint appointment of overseers, and the poor were jointly relieved by entire and general rates upon the whole parish. During the above time there were four churchwardens, and four overseers of the poor, which four overseers were nominated out of each of the four quarters within the said parish, *viz.* one out of each quarter; and in each quarter there was one churchwarden, and one of the said overseers, who collected the poor rates in the quarter; but the money was levied under one assessment upon the whole parish, and carried to one general fund, and was applied to the joint relief of all the poor of the parish. The parish is twenty miles in length, from east to west, and eight miles at a medium in breadth. On 17th *July*, 9 *Geo.* 1. at the general quarter-sessions for the county of *Durham*, it was ordered, that the several townships or constableries should separately maintain their own proper poor. From that time there have been separate appointments of overseers for each of the said four quarters, and each maintained their own poor separately. The case further stated, that orders of removal had from time to time been made, since 9 *Geo.* 1. for the removal of poor persons from one of the said quarters to another, and appeals made by one quarter against another, concerning the orders of justices relating to the poor of each. The particular question debated was, whether the several places or districts were one entire parish, township, or village, within the 13 & 14 *Car.* 2. c. 12. The Court, upon the first argument, thought the justices had no power to divide parishes (to fritter parishes into pieces, as Mr. Justice *Wilmot* expressed himself). It was argued a second time; after which lord *Mansfield* said, he had no doubt upon the first argument. The policy of this law of 13 & 14 *Car.* 2. c. 12. was mistaken; it went upon a wrong principle, the division ought rather to be enlarged than diminished. As to the question itself, consider, First, what was done? Secondly, upon what foun-

dation? *It ought to appear that there was an inability in the parish to have the benefit of the act of* 43 *Eliz.* Now here no such inability appears, but quite the contrary, for a great number of years, so that there is no foundation for the division. The acquiescence under it was upon a false notion, that the sessions had such a power, which they had not; and there is no inconvenience in setting right this wrong usage, which has obtained for forty years. Here the foundation is wanting, therefore judgment must be for the plaintiff.—Mr. Justice *Wilmot* also thought, that the larger the circle the better, therefore it would be more proper to enlarge than to lessen the division. The statute of 13 & 14 *Car.* 2. *c.* 12, goes upon this basis, that the parish is so large as that it cannot have the benefit of 43 *Eliz. c.* 2. This therefore is a fact that ought to be quite clear and certain: whereas, on the contrary, it appears in the present case, that this parish actually had that benefit from 1602 to 1723, above one hundred and twenty years. The sessions do not seem to have had any sort of power to make such an order, therefore their order is a mere nullity; it was not made upon any appeal, but upon a motion made on behalf of some of the quarters. The subsequent usage for forty years cannot vary the right; for we cannot presume that *omnia ritè acta sunt*, because we see that it was founded upon this order of sessions; and it does not appear, that the parish is so large that it cannot have the benefit of 43 *Eliz. c.* 2; therefore they ought to appoint running overseers over the whole parish. 3 *Burrow's Rep.* 1610.

And again in the case of the *K.* v. *Uttoxeter*, *Ea.* 20 *Geo.* 3. on a rule to shew cause why an order of sessions, confirming separate appointments of overseers of the poor of the township of *Uttoxeter*, and three other divisions of the parish of *Uttoxeter*, in *Staffordshire*, should not be quashed, from the special case stated by the sessions it appeared that the parish of *Uttoxeter* is five miles in length, and five in breadth, and contains five several townships; that the said townships are one entire parish, and ever since the year 1643 have had separate appointments of overseers in the several townships within the parish, but that till the year 1730 they jointly relieved and maintained the poor in and throughout the parish: but since that time they have generally maintained them separately in the several divisions—In support of these appointments it was contended that it was not necessary to shew, by argument, that there was an inability in this parish to receive the benefit of 43 *Eliz. c.* 2, as it appeared from the case itself, *that they had not received the benefit of it*, since more than four overseers had been appointed ever since the year 1643, and that statute does not authorize the appointing more than four.—*Buller* J. asked, *But should not the case have expressly found, that the parish could not receive the benefit of the statute?* To which it was answered, that if that fact

is to be collected from the circumstances stated, if it arises by inference from the finding, it need not be directly and in terms expressed: that it was a maxim to presume every thing in favour of orders, though as to convictions the rule was otherwise: that in these last, unless enough was stated to prove them right, the court takes them to be wrong; but that in orders, unless enough was stated to prove them wrong, the court will presume that they are right. On the other hand, in support of the rule for quashing the orders, the above case of *Peart* v. *Westgarth* was cited and insisted on as decisive of the question; and by lord *Mansfield*, Ch. J. the case of *Peart* v. *Westgarth* decides the question. *The inability to receive the benefit of the act must appear.* In this case, though there were separate overseers from 1643 to 1702, yet all the townships during that period jointly relieved the poor; and the case cited shews, that an acquiescence for forty years will not alter the law. The case of *Peart* v. *Westgarth* is a direct authority; and the point was then very well considered: and there the court thought, that the policy of the statute in the time of *Car.* 2. was a mistaken one*; that it proceeded upon a wrong principle; and that it was much better, for the purpose of maintaining the poor, to enlarge the districts than to narrow them.—*Aston*, *Willes*, and *Ashhurst*, Justices, concurring, rule absolute, and order of sessions confirming these appointments quashed. 1 *Doug. Rep.* 8*vo. ed.* 346. *Caldecot's Cases* 84.

But where a parish consists of several townships, some of which maintain their own poor, and have overseers separately appointed, the court will grant a mandamus for the separate appointment of overseers for the remaining townships; and where such parish has *immemorially* had more than four overseers, that is a proof that they cannot have the benefit of the statute 43 *Eliz.* c. 2, and entitles each township to have separate overseers—this was determined in the case of *the K.* v. *Sir Watts Horton, Bart. and another.* *Mic.* 27 *Geo.* 3. a rule had been obtained, calling upon the defendants, justices of the peace, to shew cause why a *mandamus* should not issue, commanding them to appoint two overseers of the township of *Pilworth* in *Lancashire.*—Affidavits stated that the parish of *Middleton* consists of eight separate and distinct townships or villages, to wit, *Middleton*, *Thornham*, *Hopwood*, *Pilsworth*, *Birtle cum Bamford*, *Ashworth*, *Ainsworth*, and *Great Lever*, *each of which has immemorially had a separate constable and church-warden.* That *Ainsworth* and *Great Lever* from time immemorial, and *Ashworth* for the space of about seventy years,

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* The principle of this case, together with the authority of that of *Peart* v. *Westgarth*, were also recognized in the case of the *King* v. *Reeding, otherwise Seal*, *Tr.* 13 *Geo.* 3. *Caldecot's Cases*, 90. 92.

have had separate overseers. That before the separation of *Ashworth*, there was a joint appointment of six overseers for the six townships, one out of each, who made a general rate or assessment for the poor of all the six townships, and that each overseer acted within his own township; but that at the end of the year there was a general settlement of all disbursements, and the expences borne equally by all. That since the separation, there has been a like joint appointment of five overseers for the remaining five townships, who have acted in the same manner as before the separation. *That the parish of* Middleton *could not reap the benefit of the* 43 Eliz. c. 2, *in relation to the maintenance, relief, and government of its poor, on account of its largeness*, being fourteen miles in length and ten in breadth, and on account of its great population, and because three out of the said eight townships maintained their own respective poor. That the defendants were requested to appoint two overseers for *Pilsworth*, which they refused. On the other hand, affidavits were read against the rule, which stated, that the parish of *Middleton* consists of four distinct and separate townships, viz. *Middleton*, *Ashworth*, *Ainsworth*, and *Great Lever*, and that the township of *Middleton* consists of five separate hamlets or precincts, and not separate townships. That the rates and assessments had been made generally for the township of *Middleton* at large, and not for each separate district; and that the overseers' accounts had been made out in the same manner. It was contended against the rule, that in order to lay a ground for the court to grant a *mandamus*, it would be necessary to shew, FIRST, that this district of *Pilsworth* is a township, and, SECONDLY, that it cannot enjoy the benefit of the statute of the 43 *Eliz. c.* 2. But on the other side it was contended, that where there is a *constable*, there is a *township*; and here it is agreed on both sides, that there is a constable: but what is decisive in the present case, is, that it appears to have been always necessary for the parish of *Middleton* to have *five* overseers, which is a proof that it could not enjoy the benefit of the 43 *Eliz.* which confines the number to four.—*Ashhurst* J. This is a very plain case. It has been argued against the rule, that if the court should grant a *mandamus* to appoint separate overseers for the township of *Pilsworth*, one of the five remaining districts, it will necessarily follow, that the others will be intitled to the same privilege. But that argument applies equally the other way; for as soon as the other three townships were separated, the remaining five had a right to be so. It is clear that the parish, as a parish, cannot have the benefit of the statute of 43 *Eliz. c.* 2, because it has always had a greater number of overseers than are allowed by that act. Therefore, upon that ground, as well as upon the former, that the other three townships have had separate overseers, I am of opinion that the five remaining ones are also entitled to have them.—*Buller* J. The parties applying for

this rule must necessarily make out two points before they can succeed. First, that this is a township. And secondly, that it cannot have the benefit of the 43 *Eliz. c.* 2. The last is the point which has been most relied on: for as to the first, it certainly is a township. Wherever there is a *constable*, there is a *township*. There may be a constable for a larger district than a township, but not for a smaller. The doubt in many of the cases, whether such a place was a township or not? has arisen where there was no constable. Then the remaining question is, whether the township of *Pilsworth* can have the benefit of the 43 *Eliz*? What is a decisive answer against that is, that the other three townships have separate overseers. We must consider what is meant by the benefit of the statute. It is that the parish may maintain their own poor, as a parish; for unless they can do it as such, they cannot have the benefit of the statute. Now it is here stated, that three of the townships maintain their own poor; but unless they all join, they cannot reap the benefit of the statute. But in fact they have done so; for they have stated the largeness of the parish, and its great population, which circumstances are not denied by the other side. Independent of these reasons, another ground laid for the *mandamus* is, that the five remaining townships require five overseers. If from necessity they must have five overseers to govern their poor, that affords a strong argument to prove, that even if this five comprehended one parish, independent of the other three, yet they could not enjoy the benefit of the 43 *Eliz.* which allows only four overseers. The cases which have been mentioned were all rightly decided, but they do not apply to the present. As to the case of *Peart* v. *Westgarth, the parish had enjoyed the benefit of the statute of* Elizabeth *for one hundred and twenty years. After such a length of time, the court said, that they must have shewn to them some strong reasons to induce them to believe that it could not be continued, before they would appoint overseers in a different manner* from that pointed out by the statute of *Elizabeth*, notwithstanding an intervening custom of forty years: but no sufficient reason appearing, they directed one joint appointment for the whole parish. Next, as to the case of *the King against the justices of Middlesex*, it appeared most clearly, that the parish of *Kentish Town* could have the benefit of the statute of *Elizabeth*. There were two overseers appointed for the whole parish, which was sufficient to answer the purposes of the statute. Then, as to the case of *the K. against Uttoxeter*, the answer to it is, that the parish did not shew that they could not have the benefit of the 43 *Eliz.* —*Per curiam*, rule absolute. 1 *Term Rep.* 374.

So where a township has had for sixty or seventy years past separate overseers, and has maintained its own poor separately from the parish at large, it is still intitled to the same privilege.—This was determined in the *K.* v. *the Inhabitants of Leigh*, *Tr.* 30 *Geo.* 3.—*John Blurton*, an inhabitant and occupier of lands

in the township or liberty of *Field*, in *Staffordshire*, appealed against a poor's rate made by the church-wardens and overseers of the parish of *Leigh*, upon the ground that the township of *Field* was entitled to maintain its own poor separately from the rest of the parish of *Leigh*, within which it was situated. The sessions quashed the rate generally, and stated the following case: The parish of *Leigh* is five miles in length, and four and a half in breadth. It consists of eight townships. The township of *Field* (one of the eight) is within the said parish, and consists of six farm-houses, with farms thereunto belonging, containing seven hundred acres of land, and three or four small houses; and for sixty or seventy years (*and before, for any thing that appears to the contrary*) has had separate overseers, and separately maintained its own poor. Two overseers have been appointed for the township of *Field*, and two for the rest of the parish of *Leigh*. *A constable has regularly been appointed for the township of* Field, and another for the rest of the parish. In 1764, a pauper was removed from the parish of *Leigh* to the township of *Field*, from which it doth not appear there was any appeal.—The question was, *whether this case comes within the* 13 & 14 *Car.* 2. *c.* 12.? Lord *Kenyon*, Ch. J. I cannot help regretting that this question should ever have been started, because it tends to disturb the quiet of this place, where the poor have been so long provided for in a particular way. It is of some importance to one's own mind, though it cannot indeed affect the decision of this case, that the gentlemen of this county have considered this as an attempt which ought not to have been made, as being an innovation of the old settled mode of maintaining the poor in this district. There is no doubt that the case is within the 13 & 14 *Car.* 2. *c.* 12. In some of the cases it has been made a question, whether the particular district were or were not a vill or township? but no such difficulty occurs in this case, because it is stated as a fact that *Field* is a township. Then the question is, whether at the time of passing the statute of *Charles* the second, this district was in a situation to receive the benefit of the 43 *Eliz. c.* 2.? for if the parish were properly divided at that time, nothing which has happened since will induce us to make any innovation. In the cases cited, *Peart* v. *Westgarth*, and *R.* v. *Justices of Middlesex*, it was stated, that from the time of *Elizabeth* down to the reign of *George* the first, those parishes had in fact reaped the benefit of the statute of *Elizabeth*; whereas here for sixty or seventy years, and perhaps for a longer period for any thing that appears to the contrary, this parish has been subdivided, and has not had the benefit of that statute. This therefore is like the case of *the King* v. *Sir Watts Horton*. It has been doubted by country gentlemen, whether the poor are better maintained in large or small districts, though the former has been judicially said in this court. In small divisions the

officers are more attentive to their duty, and in the part of the country with which I am acquainted, the poor are better provided for in the small districts. Therefore, as the usage in this case coincides with our ideas on the policy, and as we are warranted by the adjudged cases on this point, we think it highly proper that the division of this parish which has subsisted so long, should continue; and consequently that the order of sessions should be affirmed.—*Ashhurst* J. Wherever it appears that for any length of time the parish has had the benefit of the 43 *Eliz.* it must be shewn that from the increase of population, or some other cause, it is impossible that they can continue to reap the benefit of that statute. But that is not the case here: and nothing can be stronger to shew that this parish cannot have the benefit of the 43d of *Elizabeth*, than that in fact they have not had it as far back as any memory goes.—*Buller*, J. Before a parish can be subdivided into smaller districts for the maintenance of their poor, it must appear that they cannot have the benefit of the 43 *Eliz.* But it is material to consider the meaning of the phrase, that a parish cannot reap the benefit of that statute. It does not mean that it is absolutely impossible for them to maintain their own poor, as a parish, for that would not be the case even if the parish were one hundred miles in circumference, but that it is inconvenient for them so to do. Now in judging on a question of convenience there can be no doubt on the facts of this case, for it is stated that for sixty or seventy years past, and perhaps for all preceding times, this parish have not maintained their own poor jointly. And the strongest instance of their having been subdivided for a long period, is the circumstance of the parish at large having removed a pauper into this particular district, as a place liable to maintain its own poor separately. I entirely agree that greater care is taken of the poor in small than in large districts, and if in any case we were to find that it was formerly inconvenient to the parish at large to maintain their own poor jointly, though it were convenient for them to do so now, we would not assist them in overturning the old practice; for that would operate as a discouragement to the efforts of individuals to reduce the poor-rates which have succeeded in many small districts. I even go farther, for *though it should appear that a parish had enjoyed the benefit of* 43 Eliz: *yet if they could not now conveniently maintain their own poor jointly, we would permit them to divide themselves*, provided there be such legal divisions in the parish, as are capable of supporting their own poor separately under the provisions of the stat. *Car.* 2.—*Grose*, J. The question here is, whether it does not appear that the parish cannot have the benefit of the statute of *Elizabeth*, and I am clearly of opinion that on these facts they cannot; for in the first place it does not appear that the parish hath ever *as a parish* maintained their own poor; and in the next place

it is stated, that in 1764 a pauper was actually removed from the parish at large, to this very township, which is an admission on their part, that they had no right to call on this district to contribute to the general poor rate of the parish. Order of sessions confirmed. 3 *Term Rep.* 746.

But where a parish consisted of two separate districts, each of which had immemorially made a separate rate, but blended the money together in one joint fund, though applied in certain proportions; and the sessions did not find it as a fact, that the parish could not reap the benefit of 43 *Eliz.* c. 2. it was held that the districts were not entitled to maintain their own poor separately and distinctly, although since the year 1648 they have constantly had in the whole more than four overseers, and although the hamlet part has immemorially had a constable of its own.—This was the case of the *K.* v. *Newell*—Two justices allowed a rate made for the relief of the poor of the parish of *St. Giles* in *Reading*, including the hamlet of *Whitley*. The sessions, upon the appeal of *Thomas Newell*, confirmed the rate, and stated the following case.—The parish of *Saint Giles* lies partly within the borough of *Reading*, and partly without. The hamlet of *Whitley* is that part which lies without, is about three miles square, and has immemorially had a separate constable and churchwarden, *but no other church than that which is common to the parish at large.* The hamlet people have used to attend the vestry meetings of the parish at large at the church, but the people of that part of the parish out of the hamlet never attended the hamlet-meetings; for which hamlet-meetings to choose officers for the hamlet notices were published in the church on the *Easter Sunday* in every year. From 1648 to the time of appeal, the hamlet part hath had overseers separately, appointed for the hamlet and chosen at meetings of the hamlet-people only; such overseers have separately distributed the money within the hamlet, and their accounts have been separately kept, and separately allowed by the justices. The part of the parish lying within the borough has, during the same time, invariably had one churchwarden and three overseers; and such overseers of the borough-part have acted upon their separate rates, and in their distributions and accounts, distinctly from the hamlet, except that *the overseers of the borough have afforded relief to the poor belonging to the hamlet-part when resident in the borough*, and have indemnified themselves out of the general fund arising from the poor-rates, collected as well in the borough-part as in the hamlet-part, at the general settlement of accounts as after mentioned. Certificates have been separately granted by, and directed to, the overseers of the hamlet of *Whitley*, to and by other parishes; but *it does not appear that a certificate has ever been granted by or to the overseers of the hamlet of* Whitley *to or by the overseers of that part of the parish which lies within the borough.* Orders of re-

moval have been made both from and to the hamlet of *Whitley*; but *it doth not appear that orders of removal have ever been made from or to the said hamlet to or from that part of the parish which lies within the borough.* In 1649 an order was made at sessions, proportioning the difference of the rates to be paid by the hamlet-part and by the borough-part, and ever since that order its directions have been observed by the two parts, and they have paid accordingly the hamlet three-eighth parts, and the borough-part five-eighths, of the whole expences incurred by the poor of both parts of the parish; *the whole expences, when incurred, being computed into one integral sum*; the overseers of the hamlet-part and those of the borough part have accounted with each other reciprocally, according to the above proportion. *There is a poor-house in that part of the parish which lies within the borough, in which the poor both of that part and of the hamlet part have been jointly maintained*, and the expences defrayed by the two parts of the parish, according to the proportion of five to three. The overseers of the hamlet have uniformly made rates separately for the hamlet; and it does not appear that they have ever been charged by a rate made by the overseers of the parish till the rate now in question. In the year 1740 a rate was made in the hamlet, and acted under, entitled, "A rate made by "the churchwardens and overseers of the poor of the hamlet "of *Whitley* in the parish of *St. Giles*, *Berks*, *as well towards* "*the necessary relief and maintenance of the poor of the pa-* "*rish as of the hamlet*, after the proportion of 9*d.* in the "pound, charged on the inhabitants of the hamlet;" and such has been in general the mode of entitling all the rates made in the hamlet part of the parish to the time of the present rate. The inhabitants of *Whitley* conceiving themselves aggrieved by continuing the payment of three-eighths of the general expenditure, by their officers gave notice to the officers of the borough part of the parish that they would not pay any rate made by the latter, or contribute to the relief of the poor within the borough part (except of those belonging to the hamlet of *Whitley*, which should from time to time be in the poor-house of the parish of *St. Giles*, for which expence they would contribute their fair proportion according to any rate which should be agreed upon), it being their intent to apply all future monies raised by a poor-rate intended to be separately made for the hamlet to the necessary relieving of the poor only who should belong thereto separately, and without the interference of the parish of *St. Giles* within the borough. After this notice, the hamlet made a rate for the relief *of the poor of the hamlet*, which was duly published. And after this the borough part of the parish made a rate for the relief of the poor of the parish of *St. Giles* in *Reading*, *including* Whitley *hamlet part of the said parish*; but it does not appear that

any former rate for the borough part used the words, "including *Whitley* hamlet, part of the parish." The appellant, *Newell*, has no property within the borough, but is an inhabitant of the hamlet, and is charged with the rate appealed from for his property within the hamlet. He is charged also to a rate which has been made by the overseers of the hamlet for the same period, which has also been regularly published. Mr. *Newell*, conceiving that he was liable only to the last rate, and not to the rate made by the overseers of the part of the parish of *St. Giles* within the borough, appealed against it and against the order of sessions. Among other matters, a case was cited from Sir *T. Raymond's Rep.* 476, where the different districts of a parish had distinct officers, made distinct rates, and kept distinct accounts, and it was held that they were entitled to maintain their own poor separately. But by lord *Kenyon*, Ch. J. The case cited from Sir *T. Raymond* would have great weight in the decision of a case where the facts are the same; there the court proceeded on the ground of there being distinct officers, distinct rates, and *distinct accounts*; but *in these districts there are not distinct accounts, but, on the contrary, there is one joint account for both.* On these facts disclosed in this case, *it does not appear that these two districts, which compose one parish, cannot have, nor is it stated that in point of fact they have not had the benefit of the* 43 *Eliz.* but, on the contrary, almost every fact in the case goes to establish this point, that they have squared their conduct rather by that statute than by the stat. 13 & 14 *Car.* 2. *c.* 12. For if they had proceeded on the latter, there would have been no communion between them, and they would have acted to all purposes as if they had been perfectly distinct parishes. It is indeed stated, that there have been removals to *Whitley* from several different parishes; but it is not pretended that there ever was one from *St. Giles, Reading.* Probably distant parishes may have been deceived by these districts having separate overseers, and have concluded from thence that they were separate parishes: but their misconception cannot vary the case. The material facts in this case are all included in those few lines which follow the order in 1639. To that order I only refer as a date in the case; for it is extra-judicial; but it is stated, that "ever since that "order was made, the directions contained in it have been "observed by the two parts of the parish of *St. Giles*, in "regard to the respective contributions to the poor; that "they have paid accordingly, the hamlet three-eighths, and "the borough part five-eighths, of the whole expences incur-"red by the poor of both parts of the parish; *the whole "expences, when incurred, being computed into one integral "sum;* and that the overseers of each part have accounted "with each other." Then *it appears to have been only one district, affording one integral fund for the poor of both parishes;*

and that when one part has overpaid its proportion, the other has repaid it; but it was merely for their own convenience that they have subdivided themselves, as is frequently done in other parishes where one overseer agrees to superintend one part of the parish and another the rest. But with regard to the proportions agreed upon in 1649, which each district was to pay; those indeed, would not be binding at this time, if, upon enquiry, it should appear that they are unequal, considering the present circumstances of the parish. If that had appeared in the case which is attempted to be inferred from it, that these districts cannot reap the benefit of the statute 43 *Eliz. c.* 2, the objection would be well founded; but it appears that they have had the benefit of that statute. The only circumstance that can bear the semblance of an argument against this decision is, that these districts have had more than four overseers: but that, *though it may be a very material ingredient in these cases,* is not a decisive one. As, therefore, it is not stated as a fact in the case that these districts cannot reap the benefit of the 43 *Eliz.* but it appears on the contrary, from all the facts, considered together, that they have had the benefit of it, we should overturn all the authorities, if we were to determine that these districts might now be subdivided.—*Ashhurst*, J. One material fact is wanting in this case which occurred in that of the *K.* v. Sir *W. Horton*, where it was stated, that those townships could not reap the benefit of the 43 *Eliz. c.* 2. The justices at the sessions should have found that fact one way or the other. But, though they have not directly stated that fact, they confirmed the rate which was made for both the districts together, which shews that in their opinion these places could have the benefit of the 43 *Eliz.* What is decisive in this case is, that, *it does not appear that these districts have ever acted separately, but, on the contrary, that they have had one joint sum for the poor of both parts of the parishes*, and that they have settled their accounts at the end of each year.—*Grose* J. Nothing is stated in this case to satisfy my mind that this parish cannot by reason of the largeness of it, reap the benefit of the 43 *Eliz. c.* 2, but that on the contrary, they have in point of fact had it, except in one or two instances, where they have acted otherwise, merely for their own convenience. In the first place, there have never been any removals from one district to the other; next, *all the poor are maintained together in one poor house*; and the inhabitants of the hamlet have constantly attended the vestry-meetings of the parish. Now these three circumstances convince me that this parish can have, and have had, the benefit of the statute of *Elizabeth.* If they could not, the justices at the sessions should have said so: but they seem to have entertained a different opinion by confirming the rate.—Order of sessions confirmed. 4 *Term Rep.* 266.

And the appointment of one overseer alone for a township,

is bad in law, as this statute requires at least two. *Rex* v. *Clifton, Hil.* 42 *Geo.* 3. 2 *East's Rep.* 168.

The persons appointed overseers under the above statutes must be expressly appointed *overseers* in the order made by the two justices.—Thus in the *K.* v. *the Inhabitants of St. George's, Tr.* 9 *Geo.* 1. the nomination of overseers of the poor, was that such by name were appointed to set the poor to work, &c. mentioning the several duties in the act, but did not in express words appoint them *overseers*, and for this reason the nomination was quashed. *Fort.* 320. Form of the appointment.

The order must also state that they are *substantial householders. The K.* v. *Great Marlow, Tr.* 13 *Geo.* 1. *Foley*, 5.

So in the case of the overseers of *Weobly, Mich.* 20 *Geo.* 2. Two sets of overseers were appointed, and both quashed; one because the persons appointed were described only as "*principal inhabitants*," instead of pursuing the words of the statute 43 *Eliz. c.* 2. which are, "*substantial householders*;" the other, because it only called them "substantial householders," without adding *there* or *in the parish*, and this too not in the appointment, as it ought to be, but only in the direction at the foot of it. 2 *Strange*, 1261.—*The same point has also been determined in many other cases.* 1 Bott, Const's ed. 10.

But the words *substantial householders* are to be relatively taken; and therefore an order appointing a poor person is good, if there are no opulent householder in the parish. This was determined in the case of *K.* v. *Stubbs, Ea.* 28 *Geo.* 3. The township of the monastery of *Ronton Abbey* consisting of three houses, *viz.* the abbey-house with about four hundred acres of land, which was occupied by Mrs. *Stubbs*; a small house, with an acre of land belonging to it, occupied by one *Milles*, a poor man with a large family, and servant to Mrs. *Stubbs*; and a cottage with about five rood of land, the property of, and occupied by, a poor day labourer. These three persons were appointed overseers of the poor; and it was objected, that the two men, on account of their poverty, were not substantial householders. But the court held, that the words '*substantial householder*' are to be understood as *a relative term*; and therefore, in a place where there are a great many opulent farmers, the appointment of a day labourer might be improper; but in the present case, as there were no other persons to serve, the appointment ought to be allowed. 2 *Term Rep.* 406.

And the order must state the county in which the parish is situated. Thus in *K.* v. *Holditch, Tr.* 13 & 14 *Geo.* 2. two justices having appointed overseers of the poor of *W.* and exception being taken that it was not said that *W* was in the county of *Surrey*, or in what county it was; the court held the appointment bad. 1 *Bott, Const's ed.* 53.

And a criminal information will be granted for endeavouring to procure the appointment of certain persons to be overseers of the poor with a view to derive a private advantage therefrom. *R.* v. *Joliffe*, *Ea. Ter.* 32 *Geo.* 3. 1 *East's Rep.* 154.

### II. *What persons are liable to be appointed overseers.*

Inhabitant.

From what has been before observed, it is clear that no man is qualified for the office of overseer, unless he is an inhabitant for the place for which he is to serve.

Occasional residents.

And persons only occasionally resident ought not to be appointed; for in the case of *the K.* v. *Poor*, where a citizen of *London*, who resided in the summer only at *Hornsey*, was chosen by the parishioners overseer of that parish, THE COURT thought such practice of appointing persons only resident for a time, ought to be discouraged. *Carthew's Rep.* 161.

And L. Ch. Baron *Comyns* citing this case says expressly, that such persons ought not to be chosen. *Comyns' Dig. tit. Jus. of Peace* (B 64).

Nor is every inhabitant a fit person to be chosen into this office. For the justices of peace, saith Mr. *Dalton*, which have the appointing of these overseers, must therein be careful to choose such men as in every town are fittest, to wit, substantial persons, having competency of wealth, wisdom, and a good conscience. *Dalton*, c. 73.

Women.

However it has been determined that a woman may be appointed overseer of a parish, as the words *substantial householders* have no reference to sex; yet it seems that the justices will do well to refuse to nominate a woman, where there are other persons in the parish better able and more suited to serve the office.—Thus in the case of *the K.* v. *Stubbs*, *Ea.* 28 *Geo.* 3. *Alice Stubbs*, widow, *T. Willes*, and *J. Keeling*, who were described to be substantial householders, were appointed overseers of the poor for the township of the monastery of *Ronton Abbey*, in the county of *Stafford*. On appeal to the sessions, this appointment was confirmed, subject to the opinion of the court of *King's Bench* on the following case. The township of the monastery of *Ronton Abbey* is an extraparochial place, containing three houses only, and about four or five hundred acres of land. Those three houses are respectively occupied by Mrs. *Stubbs*, who lives in the *Abbey-house*, and occupies the greatest part of the land within the township. The house occupied by *Willes* is a small house, which he rents, with something more than an acre of land belonging to it: he has lived in it two or three years, with a wife and two children, and is *poor* and a *servant* to Mrs. *Stubbs*. *Keeling* is a labourer, and poor; but the house in which he lives, with four or five rood of land belonging to it, is his own property. —THE COURT after argument

took time to consider; and *Ashhurst*, J. delivered the opinion of the court.—We think that the circumstance of one of the persons appointed being a woman does not vitiate the appointment.—The only qualification required by 43 *Eliz.* is, that they shall be *substantial householders*; it has no reference to sex. The only question then is, whether there is any thing in the nature of the office that should make women incompetent; and we think there is not. There are many instances where, in offices of a higher nature, they are held not to be disqualified; as in the case of the office of high chamberlain, high constable, and marshal, and that of a common constable, which is both an office of trust, and likewise, in a degree, judicial. So in the case of the office of sexton. As to *Charlstock's* case, cited in the argument*, that is no conclusive authority. It is to be collected from the case, that there were other persons in the parish proper to serve; and if so, the court held the justices had not acted improperly in refusing to approve of a woman. Where there are a sufficient number of men qualified to serve the office, they are certainly more proper; but that is not the case here; and therefore, if there is no absolute incapacity, it is proper in this instance from the necessity of the case. And there is no danger of making it a general practice; for as the justices are invested with a discretionary power of approbation, it is not likely that they will approve of such an appointment when there are other proper objects. 2 *Term Rep.* 395.

It seems that an acting justice of the peace ought not to be appointed to the office, if there are other persons more eligible; and the justices of the peace have a discretionary power *to select proper persons*.—For in the case of *the K.* v. *Gayer*, *Hil.* 30 *Geo.* 2. *Gayer* being appointed overseer of the poor, and having appealed to the sessions, the sessions made the following order: "It appearing unto "this court, that *Gayer* was and *is an acting justice* of the "peace for the county, and also *a lieutenant of marines* on "half-pay, and that *there are other sufficient and substantial* "*householders* within the said parish, this court does there-"fore vacate and make void the said warrant of appointment." And by lord *Mansfield*. The general question relating to the

Justices of peace.

* *The King* v. *Chardstock*, *East.* 10 *Ann.* was as follows: A man and woman were elected overseers; and on the justices appointing the man, and refusing to appoint the woman, a *mandamus* was applied for to compel the justices to nominate two house-holders. *Powell* J. declared, that a woman is not to be an overseer of the poor, and that there can be no custom to put her in on account of her being an housekeeper, because it is an office created by act of parliament. *Parker*, Ch. J. said, the justices had done well in refusing to nominate a woman; and directed application to be made to the justices to nominate another person; and that if they refused, the court should be moved the next term for a *mandamus*. 16 *Viner's Abr.* 415.

compatibility of offices, and the power of appointing deputies, is unnecessary to be considered upon the present matter. The sessions, on appeal, have a right to exercise the same latitude of discretion, in judging who are to be nominated overseers as the two justices had. They have given their opinion, that Mr. *Gayer* was not a proper person to be appointed overseer. They are not obliged to give any reason for their opinion, because the legislature has entrusted them, on an appeal, with the power and authority of appointing overseers. If the sessions had given no reason, their order had been undoubtedly good; we must have presumed that they acted upon proper grounds. It is true, that where the whole reason is set out, and is clearly wrong, we may and ought to quash an order manifestly made by mistake; but then the bad reason must appear to have been their only inducement; if there may have been other grounds, they should be presumed sufficient; and the order ought not to be set aside, because some of the reasons unnecessarily given, appear to be bad. Here the whole reason is not given. They say there were other persons qualified, and supposing Mr. *Gayer* liable to serve the office, they might think him not so proper as many others. It does not appear that they considered him as exempted, or disqualified from being overseer, and that they vacated the order of the justices on that account as illegal. The execution of a discretionary power, when it is not necessary to give a reason, ought to be supported unless the whole reason is set forth, and is manifestly wrong. — Order of sessions confirmed. 1 *Burrow's Rep.* 245.

Attornies and officers of the courts at Westminster.

But it seems that if a sworn attorney, or other officer of any of the courts of *Westminster Hall*, be chosen into any parish office, he may have a writ of privilege for his discharge; for all such officers, being bound to give their personal attendance to such courts, shall be privileged from all such inferior offices, which it is apparent that for the most part they cannot personally execute. 2 *Hawk. c.* 10. *s.* 39.

And such officers shall have this privilege, not only where there is no special custom concerning their election, but also where they are chosen by a particular custom in respect of their estates or otherwise; for no such custom shall be intended to be more ancient than the usages of those courts, and therefore shall give way to them. 2 *Hawk. c.* 10. *s.* 39.

Barristers and servants of members of parliament.

And upon the like reasons it seems, that practising barristers at law, and the servants of members of parliament have the same privilege, although there do not appear to be any resolutions to this purpose. 2 *Hawk. c.* 10. *s.* 39.

Aldermen of London.

Also an alderman of *London* seems not to be compellable to serve parish offices, because as an alderman he is bound to be present in the city for the good government of it. 1 *Jones*, 462. *Cro. Car.* 585.

Physicians.

By 32 *Hen.* 8. *c.* 40. All members of the college of physi-

cians in *London*, shall be discharged of keeping watch or ward in the said city and suburbs thereof, nor shall any of them be chosen constable or other officer within the said city or suburbs, and every such election shall be void.

But it seems to have been holden, that the equity of this act doth not extend to other physicians not mentioned in it, perhaps for this reason, because physicians have no such special custom for their discharge as surgeons are said to have. 2 *Hawk*. c. 10. s. 44.

Apothecaries.

Also by 6 & 7 *Will*. 3. c. 4, every apothecary within the city of *London* and seven miles thereof, being free of the apothecaries company, shall be exempted from the several offices of constable, scavenger, *overseer of the poor*, and all other parish, ward, or leet offices, and every person exercising the said art within any other parts of this kingdom, who has served seven years as an apprentice, shall likewise be exempted from serving the said offices where they live, for so long as they shall exercise the said art.

Surgeons.

Also by 18 *Geo*. 2. *c*. 15, all freemen of the company of surgeons in *London*, and who shall be examined and approved pursuant to the rules of the said company, for so long time as they shall use and exercise the said art or science of surgery, and no longer, shall be freed and exempted from the office of overseer of the poor; and if any such person or persons shall be elected or appointed, then, on his producing a testimonial of his examination under the seal of the corporation, such election or appointment shall be void. *s*. 10.

Revenue officers.

An officer of the customs is exempted from serving the office of overseer of the poor, though he has not sued out his writ of privilege at the time; and if he be indicted for not taking upon himself the office the court will take notice of the privilege when it is shewn to them, though the writ be not taken out. *R*. v. *Warner*, *Mic*. 40 *Geo*. 3. 8 *Ter*. *Rep*. 375.

Persons apprehending and convicting burglars, shoplifters and horsestealers.

It is also enacted by 10 & 11 *Will*. 3. *c*. 4, (after reciting that "the crimes of burglary and breaking open of house, in a "felonious manner, and the crime of stealing the goods privately out of shops and warehouses, commonly called shoplifting, "and the stealing of horses had of late years much increased") that every person who shall apprehend and prosecute to conviction, any person guilty of any such felonies shall have a certificate in the manner described by the act *, by virtue whereof he or his first assignee shall be discharged of and from all manner of parish and ward offices within the parish or ward wherein such felony shall be committed. *s*. 2, 3, 4.

Militia men.

Also by 26 *Geo*. 3. *c*. 107, no serjeant, corporal, or drummer of the militia, nor any private man, from the time of his enrollment until he shall be regularly discharged from the mili-

* See this under title FELONY, div. ix.

tia, shall be compelled to serve as a peace officer or a parish officer. *s.* 130.—Note; *the act contains no exemption as to the officers.*

Dissenting ministers.

Also by 1 *Will. & Mar. c.* 18. *s.* 11, and 19 *Geo.* 3. *c.* 44, *s.* 1, every minister, preacher, or teacher of a congregation, that shall take the oaths required by the toleration act *, subscribe the declaration, and also subscribe such of the articles of the church of *England* as are required by the act, shall be exempted from the offices of church warden, *overseer of the poor*, or any other parochial or ward office.

Popish priests.

Also by 31 *Geo.* 3. *c.* 32, every priest or other person in holy orders, being a minister, teacher, or preacher of any congregation of persons professing the Roman catholic religion, who shall take and subscribe the oath and declaration † in that act mentioned, shall from thenceforth be exempted from serving upon any jury, or from being chosen or appointed to bear the office of churchwarden, overseer, or any other parochial, or wd, or other office. *s.* 8.

### III. *Appeal against the order of appointment; and removal thereof by certiorari.*

Orders not to be removed by certiorari till appeal determined

By a general rule of the court of *King's Bench*, *Ea.* 1 *Ann*, orders of justices from which the law has given an appeal to the sessions shall not be removed by *certiorari* before the matter be determined on the appeal, because it hinders the privilege of appealing; but if the time of appealing be expired the case is not within the rule. 1 *Salk.* 147.

And advantage must be taken of this rule upon the motion to file the order, for after it is filed is too late. 1 *Salk.* 147.

Persons aggrieved may appeal to the next sessions.

And by 43 *Eliz. c.* 2, 'if any person or persons shall find 'themselves grieved with an act done by the said justices of 'the peace, it shall be lawful for the justices of peace, at their 'general quarter sessions, to take such order therein as to them 'shall be thought convenient, and the same to conclude all 'parties.' *s.* 6.

But this appeal is now confined to *the next sessions*, for by 17 *Geo.* 2. *c.* 38, intituled an act for remedying the defects in the stat. 33 *Eliz. c.* 2, it is enacted 'that in case any person 'or persons shall find themselves aggrieved by any act done by 'any justices of the peace, it shall be lawful for such persons, 'giving reasonable notice to the churchwardens or overseers, 'to appeal to the NEXT GENERAL OR QUARTER SESSIONS ‡, and the

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* See title Dissenters, div. ii.
† See title Papists.

‡ It has been determined that the stat. 17 *Geo.* 2. *c.* 38, has repealed the 43 *Eliz. c.* 2. which left the appeal to ANY SESSIONS— this was held in the case of the *King* v. *Coode and*

justices there assembled are to receive such appeal, and to hear ' and finally determine the same; but if it shall appear that rea-

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*others.* *Tr.* 24 *Geo.* 3.—On 13 *Jan.* notice of appeal was given to the defendants, who were churchwardens and overseers of *Penryn*, against two rates for the relief of the poor, made on 10 *Decem.* and 6 *Jan.* 1784; the *Epiphany* sessions were held on 15 *Jan.* when this appeal was dismissed for insufficiency in the notice: on 27 *Jan.* and 13 *April* fresh notices of appeal were given against the same rates, the intention of the appellants being to proceed upon them under the stat. 43 *Eliz. c.* 2. *which does not confine the appeal to the next sessions*; the sessions took in consideration, whether an appeal can be reheard against a rate on stat. 43 *Eliz.* at any other sessions, *except the next* after making such rate, considering the stat. 17 *Geo.* 2. and thereupon they determined that such appeal could be received: then the merits being gone into, it was ordered that the said rate be quashed for insufficiency: these orders being removed *by certiorari*, a motion was made to quash the same, on the ground that the 17 *Geo.* 2. c. 38. had repealed or suspended the 43 *Eliz. c.* 2. as to the appeals: against this motion and in support of the orders of sessions it was principally contended that the stat. 17 *Geo.* 2. has no negative words; and it has been determined in several cases, that an act worded affirmatively does not repeal a prior act, *in pari materia*; that in practice appeals are brought at any sessions; that *Burn* was clearly of opinion, that the two statutes subsisted together, and an appeal might be brought under either; only if the appellant wanted to have costs, he must apply to the next session under 17 *Geo.* 2. *; that in truth, nothing

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* On these statutes it is observed by *Burn*, that 43 *Eliz. c.* 2. leaves the appeal at large, and does not restrain it to the *next sessions*; that the 17 *Geo.* 2. *c.* 38, directs the appeal to be to the *next sessions*, but not in negative words, so as to say that it shall not be at the next sessions, *and not otherwise*; that both these clauses therefore may stand well together, and the sense of 17 *Geo.* 2. *c.* 38. will be this:—The appeal against any thing done or omitted by the overseers or justices, in cases wherein no appeal is given by former statutes, must be to *the next sessions only*, because the clause which gives the appeal limits it to such next session; but in cases wherein an appeal is given by the former statutes, such appeal *may be* to the next sessions, according to this clause, or may be according to the directions of such former statutes; but that the justices have no power to award costs, unless the appeal be to the next sessions, pursuant to the directions of 17Geo.2: that in truth many acts of the churchwardens and overseers may be so contrived, that they cannot be known before the next sessions, and it would give them a great opportunity of fraud, if they might be safe by concealing such practices until the time of appealing to the next sessions should be expired. See *Burn's Justice*, 20*th ed. vol.* 3. *p.* 541.

But from the above case of the *K.* v. *Coode*, and the cases of the *K.* v. *Micklefield*, and the *K.* v. *Atkins* next following, it seems to be now clearly settled, that *Burn's* construction is WRONG.

'sonable notice was not given, then they shall adjourn the said 'appeal to the next quarter sessions, and then and there deter-

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could be more material than for the legislature to mean, If you take the matter up immediately you shall have costs, if you lie by you shall not: that the practice all over *England* had followed *Burn's* opinion; so that it became a question of considerable importance.—THE COURT desired that this case might stand over for some days; and that in the mean time authorities might be searched for, and an enquiry made into the practice.—A few days after, Mr. *Batt* informed the court that he had inquired into the practice, and found that in counties where there are no boroughs such appeals are not frequent; but that in *Gloucestershire, Staffordshire, Berkshire, Dorsetshire, Surrey*, and some others which he mentioned, they were received at any time. In the *West Riding*, they were confined to the next sessions. He observed that much inconvenience might arise if appeals in all cases were to be restrained to the next sessions; for a rate might purposely be made too late to give notice in time: to which Mr. Justice *Ashhurst* answered, that the next sessions always meant the next possible sessions.—He then proceeded to state from affidavits some facts to shew, that in this case there had not been sufficient time, and that in truth the *Easter* sessions ought to be considered as the next; and he pressed very much to have the case sent back to be re-stated as to those facts.—Lord *Mansfield* said, as at present advised, he thought the 17 *Geo.* 2. *c.* 38, *did confine the appeal to the next sessions*; but that on the affidavits stated, the case ought to be sent back, in which case there must be a rule to show cause, that the other side might have an opportunity of answering the affidavits.—*Ashhurst* and *Buller*, justices, agreed with Lord *Mansfield* as to the construction to be put on 17 *Geo.* 2. *c.* 38, but they thought the case could not be sent back, unless for a defect appearing on the face of it, and that if the appellants were prevented by any misbehaviour of the other side from giving sufficient notice in time before the next sessions, they ought to have applied to the court in the following term.—After some conversation the court agreed, that they must decide that the 17 *Geo.* 2. *c.* 38, HAD REPEALED the 43 *Eliz.* *c.* 2, in this particular; that the case could not be sent back; and THE ORDERS *complained of must be quashed.* 1 *Bott*, *Const's ed.* *p.* 237.

So in the *King* v. *Micklefield*, *Hil.* 25 *Geo.* 3. which was an appeal against three rates for the relief of the poor, made 12th *May*, 14th *June*, and 15th *September*, 1783, the appeal was to the *Michaelmas* sessions, where the first rate was given up by the respondents, the third quashed for inequality, and the second also quashed, subject to the opinion of the court of *King's*

'mine the same; and the said justices may award the party for 'whom such appeal may be determined reasonable costs, in the 'same manner as they are empowered to do by 8 & 9 *Will.* 3. 'c. 33. s. 3, in case of appeals concerning settlements. PROVI-'DED ALWAYS, that in all corporations or franchises who have 'not four justices of the peace, it shall be lawful for any per-'sons, in any of the cases aforesaid, where an appeal is given

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*Bench* on a case which stated, that the money raised was to reimburse the overseers for the expence of law proceedings. In this case the court having confirmed some parts of the order, it was sent back to be re-stated as to one particular fact; and being returned it was objected, that the appeal appeared not to be to the next sessions, and was therefore, by the authority of the *King* v. *Coode*, too late.—To this it was answered, that in fact the rate was allowed on the 28th *June*, and published in a general way, namely, a rate at so much in the pound in cash on the 29th. The *Midsummer* sessions were held the beginning of *July* but the appellant had no opportunity of seeing the rate, or having a copy, so as to know the precise sums assessed, or to be able to appeal till after the sessions; and it might be attended with great inconvenience, as the parish officers, by publishing the rate late, and avoiding to give copies, might defeat the party of his appeal: besides, the appeal was to the next sessions after he was aggrieved: and he could not be aggrieved till he was called upon to pay. That this order had been in part confirmed by the court last *Trinity Term*; and it would be inconsistent to quash it now, as being too late—But by lord *Mansfield*, the objection was not then taken: the party is aggrieved by the assessment, and must appeal from that: the only time to be looked to, is the time of publication: and it was on this the determination went in the *King* v. *Coode*. The time of publication is not mentioned in this case; but we must intend a publication, because the justices call it "rate." *Ashhurst*, justice. In the cases of hardship and fraud which have been put, the appeal might be to the following sessions, as being the next possible: but that is not the case here. The publication of a rate so, much in the pound, was enough to put the party on enquiring: *he did not do so, and the appeal was too late.* 1 *Bott*, *Const's ed.* 239. Caldecot's Cases 507.

And in the case of the *King* v. *Atkins*, *Mic.* 31 *Geo.* 3. it appeared that a rate was made in *October* 1789, and allowed in the *November* following, against which the defendant appealed to the next *Easter* sessions, when the appeal was dismissed with costs, because it was not made to the next sessions—The order of session being removed by *certiorari*, the court without hearing any argument, confirmed the order of sessions on the authority of the above cases of the *King* v. *Penryn* (i. e. *Coode and others*) and the *King* v. *Micklefield*. 4 *Term Rep.* 12.

'by this act, to appeal to the next general or quarter sessions 'of the peace, for the county, riding, or division, wherein 'such corporation or franchise is situate.' *s.* 4, 5.

If an appointment be made by persons calling themselves justices and who are not, it is a nullity, and therefore the party appointed may not appeal; but if an appeal be made, stating that the appointment was made by such persons "*justices of the peace*"—this is an admission of their jurisdiction, and conclusive against any objection to their jurisdiction. *Caldecot's Cas.* 133.

And in the case of *the K.* v. *Forrest and others, Hil.* 29 *Geo.* 3, it was determined, that the parishioners as well as the overseers, who are appointed, may appeal to the sessions against the appointment made by the justices. For by lord *Kenyon* Ch. J. the clause in 43 *Eliz. c.* 2. *s.* 6. is conceived in the most general terms; it enacts, "that if any person or persons shall "find themselves aggrieved, he may appeal." And a case may reasonably be imagined to exist, in which the parishioners would find themselves aggrieved by the appointment of overseers when we recollect the enormous sums of money which are received for the relief of the poor) as, for instance, if the magistrates were to appoint persons who were insolvent, or the like. 3 *Term Rep.* 38.

And if an appeal be lodged against any act done by virtue of these statutes, and the same is dismissed by the sessions on the ground of informality, it seems that a second appeal cannot be lodged at any time subsequent, to bring the matter again into judicial discussion. *The K.* v. *the Justices of Yorkshire, Tr.* 30 *Geo.* 3. 3 *Term Rep.* 776.

## II. *Poor's Rate.*

i. *Making a rate for the relief of the poor.*

ii. *Rating parishes in aid.*

iii. *What persons and property are liable to be rated.*

iv. *Rating persons to the maintenance of their relations.*

v. *Appeals against the poor's rate, and removal thereof by* certiorari.

vi. *Levying the rate.*

## i. *Making a rate for the relief of the poor.*

By whom the rate is made and allowed.

By 43 *Eliz.* c. 2, 'the churchwardens and overseers of the 'poor of every parish, or the greater part of them, shall, with 'the consent of two justices, (1 *Qu.*) dwelling in or near the 'parish or division, raise weekly, or otherwise (by taxation of 'every inhabitant, parson, vicar, and other, and of every oc-'cupier of lands, houses, tithes impropriate, propriations of 'tithes, coal mines, or saleable underwoods in the parish, in 'such sums of money as they shall think fit), a convenient stock 'of flax, hemp, wool, thread, iron, and other necessary ware 'and stuff, to set the poor on work; and also money for the 'relief of the lame, impotent, old, blind, and other, being poor 'and not able to work; and also for the putting out of poor 'children apprentices*, and to do all other things concerning 'the premises.' s. 1.

'And the mayors, bailiffs, or other head-officers of every 'town corporate and city, being justices of peace, shall have 'the same authority within their jurisdiction, as justices of the 'peace of the county.' s. 8.

Also by 13 & 14 *Car.* 2.) c. 12, which authorises justices to appoint separate overseers in places that cannot have the benefit of 43 *Eliz.* c. 2. (*see* p. 673, 764 *supra*). 'The justices of 'peace within the said counties shall have like powers to raise 'and levy monies, and to execute all other acts within every 'township or village, as is appointed for them to do within any 'parish†. s. 22.

Overseers may act where there are no churchwardens.

'And by 17 *Geo.* 2. c. 38, overseers of the poor within every 'township or place where there are no churchwardens shall exe-'cute all the acts and powers concerning the relief of and relating 'to the poor, as churchwardens and overseers may do by this 'or any former statute concerning the poor.' s. 15.

The concurrence of the parishioners is not at all requisite to the making of a rate; for the churchwardens and overseers, *with the confirmation of two justices*, may alone order a sum of money to be raised for the relief of the poor. *Towney's case*, *Hil.* 2 *Ann.* *Salk.* 531. 2 *Ld. Raym.* 1013.

But this consent of two justices, which the stat. 43 *Eliz.* c. 2. requires, is to be understood of two justices out of sessions; for where an order for a rate was made at the general

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* For this see title APPRENTICES.

† Therefore a mandamus will lie to the justices of peace, and to the churchwardens and overseers of the poor of a distinct jurisdiction, (as for the precinct of the cathedral church of *Norwich*, which is a distinct jurisdiction) to make rates for the relief of the poor. *Lidleston* v. *Mayor and Corporation of Exeter*, *Hil.* 9 *Will.* 3. *Foley*, 18.

quarter sessions, and it was moved to quash such order, on the ground that the justices have not any jurisdiction to make such original order at the quarter sessions, but only if it come before them by way of appeal; THE COURT quashed the same—*Powell* J. saying that it was impossible to make it good. *Q.* v. *Abberford*, *Mic.* 1 *Ann.* 2 *Ld. Raym.* 798.

But the order need not set forth, that the justices allowing the poor's-rate were dwelling *in or near* the division where the parish lies. 16 *Viner's Abr.* 425.

And in the case of *the K.* v. *Uttoxeter*, *Ea.* 5 *Geo.* 1, it was adjudged, that the allowance of the poor's-rate by two justices, is merely a ministerial act. 1 *Bott*, *Const's ed.* 61.

Therefore, if the justices refuse to sign a poor's-rate, the court will grant a *mandamus* to compel them. *Foley*, 19.

And in the case of *the K.* v. *the justices of Dorchester*, *Mich.* 7 *Geo.* 1, where a *mandamus* issued to the defendants to sign a poor's rate made by the churchwardens and overseers; and before the return a motion was made to supersede it, for several objections to the fairness of the rate, alleging that this would be better for the poor than to reserve the debate of them for a formal return.—THE COURT said that *the two justices are necessary to sign the rate only by way of form*, for the churchwardens and overseers have the power of making it; and whether it be a fair rate or not, is proper for the jurisdiction of the sessions, and was never intended for our examination. Afterwards the *supersedeas* being denied, the justices returned, that they could not allow the rate, it not being a just and proper rate. THE COURT having before given their opinion of this upon the motion, ordered *an attachment* against the justices, who thereupon submitted, and returned, that they had allowed the rate. 1 *Strange*, 593.

So in the case of *the K.* v. *Edwards and Symonds*, *Trin.* 7 *Geo.* 3, where the defendants being justices of the peace, had evaded the signing of a poor's-rate in obedience to a writ of *mandamus*, by keeping out of the way so as not to be served with the writ; the court granted *an attachment* for a contempt. 1 *Black.Rep.* 637.

Also if the overseers refuse to make a rate where it is necessary, they may be compelled by *mandamus*; for in the case of *the K.* v. *Barnstaple*, *Hil.* 2 *Geo.* 2, on an application for a *mandamus* to compel the overseers to make an *equal rate*—THE COURT observed that although they would not grant a *mandamus* to make an *equal rate*, they might well grant a *mandamus* to make a rate *in general*, on an affidavit being produced, that a rate is wanting: for this court is the proper jurisdiction to make laws to be put in execution. 1 *Barnard*, 137.

How rates to be published. ‘And by 17 *Geo.* 2. c. 3, the churchwardens and overseers ‘and other persons authorised to take care of the poo[r] in every

'parish or place, shall give public notice in the church of every 'rate for the relief of the poor, allowed by the justices, THE 'NEXT SUNDAY after the same is allowed, and no rate shall be 'valid, so as to collect the same, unless such notice shall have 'been given.' *s.* 1.

Therefore if a poor-rate be not published in the church *on the next Sunday* after it hath been allowed by the justices, it is a nullity, and payment under it cannot be enforced, although it has not been appealed against at the sessions; and lord *Kenyon*, Ch. J. said it was a radical defect in the rate itself, which nothing could cure. *The King* v. *Newcomb*, *Tr.* 31 *Geo.* 3. 4 *Term Rep.* 368.

But it will be no objection on a special case, stating particular facts for the opinion of the court, that it does not appear that the rate was published in the church pursuant to the statute.—For in the case of *the K.* v. *the Undertakers of the Aire and Calder navigation*, *Mic.* 29 *Geo.* 3, on a case stated at the sessions, on an appeal against a poor's rate, one objection was, that it did not appear that the rate had been published in the church, pursuant to 17 *Geo.* 2. *c.* 3. *s.* 1, *for that it was only stated to be made and allowed, which did not include publication.* Lord *Kenyon.* If the question was, whether an action of trespass could be supported by the persons whose goods were distrained for non-payment of the rate? there is no doubt but that the publication of the rate must be proved; but *the parties came here upon facts ascertained by the sessions*, on which they ask for the opinion of the court as to the question of law arising upon these facts; therefore *it would be wandering from the point to seek objections which were never intended to be referred.*—*Buller* J. If the objection, that the rate does not appear to have been published in the church would hold, it would destroy every case of this sort which comes before the court. But the distinction between orders of justices and special verdicts has been long established; in the latter, where it concludes generally, the whole case must appear upon record; but the very reverse is the rule which obtains in the case of orders of justices; for the court will intend every thing to be right which does not appear to be otherwise, and they will not entertain any doubt upon a subject upon which the justices did not. Here the court of sessions have said, that the rate was duly made; they made no question about the publication of the rate, and they did not intend to leave any question upon that head to the court. 2 *Term Rep.* 664.

Copies of rates to be entered in a book.

'And by 17 *Geo.* 2. *c.* 38, copies of all rates made for the 'relief of the poor shall be entered in a book to be provided by 'the churchwardens and overseers, who shall take care that 'such copies shall be entered within fourteen days after all ap-'peals from such rates are determined, and shall attest the 'same by putting their names thereto; and all such books

'shall be preserved by the churchwardens and overseers or 'one of them, whereto all persons assessed or liable to be 'assessed may resort, and shall be delivered over from time 'to time to the succeeding churchwardens and overseers as 'soon as they enter into their offices, and shall be produced 'by them at the general or quarter sessions, when any appeal 'is to be heard. *s.* 13.

Penalty on neglect thereof.

'And if any churchwarden, overseer of the poor or other 'officer, shall neglect so to do, or act contrary hereto, he 'shall on oath thereof made, within two calendar months after 'the offence, before two justices, forfeit for the use of the 'poor not exceeding 5l. nor less than 20s. to be levied by distress and sale of the offender's goods, by warrant from such 'justices, which sum shall be paid to some churchwarden or 'overseer of such parish or place. *s.* 4.

The rates to be inspected by any inhabitant, and copies taken.

'And by 17 *Geo.* 2. *c.* 3, the churchwardens and overseers 'shall permit every inhabitant to inspect such rate at all 'seasonable times, paying 1s. and shall upon demand forthwith give copies, paying 6d. for every twenty-four names.' *s.* 2.

Penalty on not permitting any inhabitant to inspect, &c.

'And if any churchwarden or overseer shall not permit any 'inhabitant to inspect the rates, or shall refuse or neglect 'to give copies thereof, he shall forfeit 20l. to the party 'aggrieved, to be recovered by action in any court of record.' *s.* 3.

For what time the rate may be made.

The stat. 44 *Eliz.* *c.* 2. authorises the overseers, with the concurrence of the justices, to tax the inhabitants, *weekly or otherwise*, to the relief of the poor.

Therefore it was said in *Tracy* v. *Talbot*, *Trin.* 3 *Ann*, by *Holt*, Ch. J. at *nisi prius*, that an inhabitant cannot be rated for the whole quarter, for poor rates are to be assessed monthly by the statute, and by this means a man cannot move in the middle of a quarter, but he must be twice charged. *Salkeld*, 532.

So in the case of the parish of *Littleport*, *Hil.* 6 *Ann*, *Holt* Ch. J. observed, that there ought to be a *monthly rate*, because possessors are to pay, and possessions frequently change. 6 *Mod. Rep.* 97.

But in the above case of *Tracy* v. *Talbot*, the jury said, the custom was otherwise. *Salk.* 532.

And in *the K.* v. *Stevens*, *Ea.* 1 *Geo.* 3, where, on a special case reserved for the opinion of the court of *King's Bench*, it was *inter alia* objected, that it was a rate made for *half a year* ending on *Easter Monday* next, whereas a rate cannot be made for longer than a month---Mr. Justice *Wilmot* said, he believed that whatever *the law* might be, *the practice* was, not to make the rates *monthly*. 2 *Burrow's Rep.* 1152.

And this custom seems to have been sanctioned by the court

of *King's Bench*; for in the case of *the K.* v. *the Overseers of St. George's Middlesex*, upon a motion for a *mandamus* to make a *monthly rate* for the relief of the poor, the rates being now made quarterly, lord *Mansfield* said, that it seemed full as well to make a rate for *three months** as for one month, and the rule was discharged, 1 *Bott, Const's ed.* 64. 2 *Black. Rep.* 6?4.

And as to the objection, that by this means a man cannot move in the middle of a quarter, but he must be twice charged; the stat. 17 *Geo.* 2. *c.* 38. has remedied that inconvenience, for by that statute it is enacted that 'where any person shall 'come into or occupy any premises from which any person 'assessed shall be removed, or which at the time of making 'the rate was empty, every person so removing or coming 'in shall pay the rate in proportion to their respective occupa-'tion. *s.* 12.

For what time a rate may be made.

And if the overseers make an assessment for the relief of the poor for six months prospectively, and a person rated thinks it objectionable on that ground, he must appeal to the quarter sessions; and if he does not, he cannot support an action against those who distrain on him for non-payment of the rate. For in the case of *Durant* v. *Boys and Burgis, Hil. Ter.* 36 *Geo.* 3, which was an action of trespass for distraining the plaintiff's cattle; it appeared that the plaintiff was the occupier of a farm at *Sandhurst*, for which place an assessment was made for the relief of the poor generally, without expressing it to be for any particular time: but, 'it had always been 'customary in that parish to make the rate for six months pro-'spectively;' and it was in truth intended by the overseers, and understood by the justices, to have been made for that period: the plaintiff never appealed against the rate, but being distrained on for non-payment, brought this action, in which he obtained a verdict subject to the opinion of the court on the above circumstances. In support of the action it was contended, that as the stat. 43 *Eliz.* *c.* 2, only directs that the overseers shall raise money *weekly or otherwise*, they have no authority to make a rate for the period of six months; and having in this case done so, it was an excess of jurisdiction for which the defendants were liable in trespass.---By Lord *Kenyon*, Ch. J. in which the other judges concurred, We are not now called

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* But it rather seems that the poor's rate ought not to be made for more than *three months*; for in the case of the *Overseers of Bishopsgate* v. *Bucher, Mic.* 7 *Geo.* 1, a tax for the relief of the poor having been made, and by inadvertency confirmed by the alderman of the ward for *a whole year*; the court on a motion for a mandamus to compel him to grant a warrant to distrain for this tax, made a 'rule 'that he should grant his warrant to distrain for the tax for one 'quarter of a year and no more.' 8 *Mod. Rep.* 10.

upon to say what the quarter sessions should have determined, if there had been an appeal to them against this rate, though I cannot forbear observing that there is nothing illegal on the face of the rate. The present objection that has now been made, is, that the rate is bad because it is a prospective rate: in order to prevent any mistakes, that may hereafter arise in other cases from a supposition that this objection is well founded, it is necessary to declare, that 'a prospective rate may 'unquestionably be good: every person who is conversant in 'matters of this kind, knows the impossibility of foreseeing, 'and providing for every expence that may arise; and there-'fore, a rate may be made prospectively, not indeed wantonly, 'but such as is adapted to the probable expences of the parish:' but the short answer to this action is, that 'all about the rate 'is clearly out of the present case: if it be bad, the parties 'who thought themselves aggrieved, should have appealed.' Therefore if it had appeared on this rate, that it was made for six months, and if the plaintiff wished to object to it on that account (of 'the validity of which objection I will say nothing)' he ought to have apealed against it to the sessions. The legislature seems to have been anxious, that preliminary objections to a rate should be made in the first instance; the stat. 17 *Geo.* 2. c. 28, directs, that poor rates shall be published in the church the next *Sunday* after they are allowed, and any person objecting to the rates must appeal to the next sessions; there the question is decided in a *forum domesticum*, and in many instances before the rates are collected. Therefore the plaintiff should have objected to this rate if he thought it objectionable, by appealing to the quarter-sessions, and having waved making his objection there, it is not competent to him to make it by an action at law. 6 *Ter. Rep.* 580.

For what purposes the rate may be made.

By 43 *Eliz.* c. 2, the poor's rate is to be made for the purposes of 'raising a convenient stock of flax, hemp, wool, 'thread, iron, and other necessary ware and stuff to set the 'poor on work; AND ALSO competent sums of money for 'and towards the necessary relief of the lame, impotent, old, 'blind, and such other among them being poor and not able 'to work: AND ALSO for the putting out of poor children 'apprentices; AND to do and execute all other things as well 'for the disposing of the stock, as otherwise concerning the 'premises, as to them shall seem convenient.' *s.* 1.

A poor's rate can only be made for the relief of the poor; it therefore cannot be made to reimburse former overseers; for an overseer is not bound to lay out money before he has received it by a rate.—This was determined in *Tawney's Case*, *Hil.* 2 *Ann.*—*Tawney*, being an overseer of the poor, laid out his money for their relief, and was turned out of his office before the end of the year, by which means he lost the opportunity of making a rate to reimburse himself. Upon this he obtained a *mandamus* di-

rected to the church wardens and overseers to make a rate to reimburse him, and it was argued, that there could be no such charge, neither by the common law nor by the statute. By *Holt*, Ch. J. *We cannot order the parish or overseers to make a rate to raise money to reimburse an overseer, but only to raise money for the relief of the poor*, nor can they make a rate otherwise. The act of parliament is expressly so, and must be pursued. *An overseer is not bound to lay out money till he has it; if he does, he must make a new rate for the relief of the poor, and out of that he may retain to pay himself. Tawney* should have done so; he trusted where he needed not have done it; he has not pursued the means the statute gave him; and we cannot relieve him.—And by the whole court, The *mandamus* lies not*. *Salk*. 357.

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* And the rate must be made *for the relief of the poor*; for if it is made *expressly to reimburse*, it will be bad. See the opinion of *Willes* J. in the case of the *King* v. *Wavell*, *infra*.

On the authority of the above case, an order of sessions to reimburse former overseers for law charges, was quashed, in the case of the *Overseers of Chichester*, *Mich*. 11 *Geo*. 1. So also in the case of the *Overseers of Llandilo*, *Mich*. 2 *Geo*. 2, there was a similar determination on a like order. 1 *Bott*. *Const's ed*. 75. *n*. (*b*),—The like point was also determined in the *King* v. *the Overseers of Rotherhithe*, *Mic*. 11 *Geo*. 1. 8 *Mod*. *Rep*. 338.

But in the case of the *King* v. *the Mayor and Burgesses of Gloucester*, *Tr*. 33 *Geo*. 3, it appeared that by 21 *Geo*. 3. c. 74. *s*. 33, (a private act of parliament for building a new gaol, and amending the several acts passed for the maintenance of the poor of the city of *Gloucester*), 'the churchwardens and overseers of the poor of the several parishes in the said city, are 'among other things authorized to make a rate for the relief of 'the poor, and also in addition thereto, to raise such further 'sums as shall from time to time be necessary to defray the 'reasonable and just expences, which they the said churchwardens and overseers shall be put to in the execution of their said 'respective offices, or which they now are or hereafter shall be 'charged with, and made liable to pay, by any act or acts of 'parliament, or other lawful ways or means, by virtue of their 'said respective offices, by the ways and means by the said act 'directed, &c. And in case any overplus upon settling their accounts shall appear to remain in the hands of any churchwardens or overseers of the poor, to be by them carried to the 'succeeding accounts of such churchwardens and overseers respectively.'—That the churchwardens and overseers of the poor of the parish of *St. Nicholas*, in the said city of *Gloucester*, made a rate for raising the sum of 26*l*. 5*s*. for the relief of

But yet the succeeding overseers are now compellable to reimburse the former all sums expended by them while in office, out of

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the poor, and also the further sum of 80*l.* *as necessary to defray the expences they shall be put to in the execution of their respective offices*, pursuing the precise words of the statute *. Upon the appeal of the mayor and the burgesses of *Gloucester*, to the sessions of the county of *Gloucester*, against the inequality, illegality, and irregularity of this rate, the sessions confirmed the rate, and stated *a special case for* the opinion of the court of *King's Bench*, whereby it appeared that the 80*l.* to be raised by such rate, *was to repay money borrowed*, to defray the expences of a law suit, carried on by command of the vestry. Against this rate it was objected, that it would be in fact a tax upon inhabitants who have removed into this parish since the expences were incurred; that the general law was established in *Tawney's* case, the *K.* v. *Micklefield*, and the *K.* v. *Wavel*, that *a rate cannot be made to repay money borrowed, or to reimburse an overseer after he is out of office*; that the words of this private statute do not make any difference; for the words *just and reasonable expences*, are to be construed according to that meaning which the general law puts upon them; and it has been determined that a rate made for *the purposes stated* in the present case, are neither just nor reasonable.—In support of the rate it was observed, that the cases cited went upon the distinction that you cannot make a rate, which shall expressly appear by its title to be made *for the purpose of repaying money borrowed;* but that where an overseer has advanced money out of his pocket, and he has borrowed it, as in the present case, it can make no difference; he may make a new rate for the relief of the poor, and out of the sum levied under it, retain sufficient to reimburse himself; and that the present rate *does not, upon the face of it, profess to be made for the purpose of repaying borrowed money*, but pursues the very words of the act of parliament, by virtue of which it is made.—By lord *Kenyon*, Ch. J. The specious objection made to this rate is, that the inhabitants being

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*That part of the title of the rate which related to the 80l. was in the following words:—"And also, for raising the sum of 80l. as necessary to "defray the reasonable and just expences which they the said church-"wardens and overseers shall be put to, in the execution of their said re-"spective offices, or with which they now are, or hereafter shall be "charged and made liable to pay, by an act or acts, or any other law-"ful ways and means, by virtue of their said respective offices; and in "case any overplus upon the settling of their said accounts shall ap-"pear to remain in the hands of any churchwarden or overseers of the "poor, the same shall be paid to the succeeding churchwardens and "overseers of the poor, to be by them carried to the succeeding ac-"counts of such churchwardens and overseers respectively.'

any money which may be collected under the rate for the relief of the poor, although the rate cannot be made in express terms to reimburse; for by 41 *Geo.* 3. *sess.* 2. *c.* 23, it shall be lawful for the churchwardens or overseers of the poor of any parish, township, vill, or place, out of any money which they shall collect by virtue of any rate for the relief of the poor, to repay

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a fluctuating body, the expences incurred by one set of occupiers, will thereby be defrayed by their successors. This objection, however just it may appear in theory, is impossible to be adopted in practice; for the parish expences are incurred as it were from day to day, and from hour to hour, so that every preceding or succeeding occupier must pay either more or less than that which is due by him according to the exact time he has lived there. In the present case, expences are incurred in litigating points in which the interest of the parish was concerned; the business was commenced and carried on by an order in vestry, made by those who were to judge for the interest of the parish, and a rate is made to repay part of this expence; it is not pretended that the expences were improper, or the amount of them too great. At present I will not enter into a discussion of the propriety of expending this money for this or that purpose when it shall be received: but I am glad that I am not only justified, but bound to give an opinion in support of this rate before we come to that point; the only question now before the court is, *whether this is in itself a legal rate or not.* To do this, I need only compare the rate with the authority, by virtue of which it is made, and I find that it is couched in the very terms of the act of parliament, and that the framers of the rate have studiously inserted every material word of the statute in its title. *The rate therefore professes to raise money for authorized and legal purposes:* then how is it possible for us, after comparing the rate with the act; and seeing that they correspond, to say that the rate is illegal? But it is argued that the sessions have stated the purposes to which the 80*l.* is intended to be applied, and that we are bound to notice them: now if the justices state that which is not necessary to decide the case sent to us for our judgment, we ought to take no notice of it; *and we are now deciding upon the legal form of the rate,* and not upon the future application of the money. If the purpose thus stated in the case be illegal, the objection comes too soon; it is to be made when the overseers have so applied the parish funds, and may be agitated on an appeal against the allowance of their accounts, but it is sufficient for us at present to say that the rate itself is legal, being warranted by the very words of the act of parliament.—The other judges concurring—Rate confirmed. *Nolan's Rep.* 272. 5 *Term Rep.* 346.

the preceding churchwardens and overseers, guardian or guardians of the poor, all such sums as they have *heretofore* advanced or expended for the relief or maintenance of the poor during the time that no rate has been made, or during the time that any appeal has been depending which affected the whole of such rate, or upon the hearing of which, the same might be wholly quashed; and in case the churchwardens and overseers shall not pay to the preceding churchwardens and overseers, guardian or guardians, all such sums within fourteen days next after demand in writing made for that purpose, it shall be lawful for such preceding churchwardens and overseers, guardian or guardians of the poor, to apply to the then next court of general or quarter sessions of the peace, giving due notice in writing of such application to the then churchwardens and overseers or two of them; and the said court of general or quarter sessions shall enquire into the matter of the said application, and examine the parties and their witnesses upon oath, and shall make an order upon the then churchwardens and overseers, out of the money collected or to be collected by them under any rate for the relief of the poor, to pay such sums as the preceding churchwardens and overseers, guardian or guardians of the poor, at the said court shall think fit; and the sums of money so ordered by the said court to be paid, shall be levied and recovered by distress and all such other ways as money charged on any person by any rate made for the relief of the poor can be by law levied or recovered. *s.* 9.

And where the overseers have, during their continuance in office, made a rate to reimburse themselves for monies previously expended in relieving the poor, the succeeding overseers are to levy the same and reimburse their predecessors.—For by 17 *Geo.* 2. *c.* 38, "in case any person shall neglect to pay to the overseers any sum that he shall be legally rated to, the succeeding "overseers shall levy such arrears, and reimburse their predecessors all sums expended for the use of the poor, and allowed "to be due to them in their accounts." *s.* 11.

So also overseers, while in office, may make a rate to reimburse themselves for the expences of law proceedings, if such expences are necessarily incurred.—*The K.* v. *Micklefield**, *Hil.* 25 *Geo.* 3. 1 *Bott, Const's ed.* 78.

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* The case of *the K.* v. *Micklefield* as to this point, was as follows: On an appeal against three rates, a case was made on one of them, stating that the money raised was to reimburse the overseers for the expence of law proceedings, and *it was admitted that the overseers might reimburse themselves for law expences necessarily incurred;* but that was denied to be the case here. *Willes* and *Ashhurst*, Justices, inclined to think that under the

But a rate cannot be made to repay money *borrowed* by the parish for the purpose of rebuilding the workhouse.—This was determined in the case of the *K.* v. *Wavel and others, Ea.* 19 *Geo.* 3. This was a rule to shew cause why a rate for the relief of the parish of *Effingham*, in the county of *Surrey*, and an order of sessions confirming the rate, should not be quashed, on the ground, that the parties applying for the rule were overrated. The sessions had refused to state a special case; but the counsel for the appellants being of opinion that the rate would appear to be bad from the title, they removed it by *certiorari* into this court, and obtained the present rule. The title of the rate was as follow: "*Surrey*, to wit. An assessment on all and "every the occupiers of lands and houses in the parish of *Effing-* "*ham*, for the necessary relief of the poor, *and towards payment* "*of money borrowed for repairing and rebuilding the workhouse.*" —The objection was, that upon this title, the rate appeared to be made for a purpose not within the statute of 43 *Eliz. c.* 2, *viz. towards payment of money borrowed, &c.* In support of the rate it was contended, that it was unnecessary to have said more in the title than "a rate for the relief of the poor," and that the acts and orders of magistrates (except convictions) are entitled to every intendment from the court that can support them, and therefore the court would intend the whole money to have been assessed for the first purpose expressed in the title (if it should be thought that the other was not within the statute), *and would reject the additional words as surplusage*; that if the present objection was founded in law, the proper method of getting at it would have been by an appeal from the allowance of the overseers' account; that, however, this purpose, of building

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circumstances, the expences of the law proceedings were properly incurred, and ought to be raised to reimburse the overseers; but they wished to have it stated, whether the vestry had directed the proceedings. *Buller*, J. thought the expence properly incurred, and was of opinion the overseers wanted no authority from the parish to defend the action: the overseers must incur some costs before it is possible for them to have the authority of the parishioners; and if they are intitled to be reimbursed for any part, they must for the whole, unless they misbehave themselves in the conduct of the business; but here no such misconduct appears.—The case was sent back in order to be restated as to the fact of there having been a vestry meeting respecting the lawsuit, but it was ultimately decided upon a different point.* 1 *Bott, Const's ed.* 78. *Caldecot's Cases*, 507.

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* See p. 710. supra.

or repairing a workhouse, was manifestly within the statute of *Elizabeth*, since it would be in vain to provide for the sustenance of the poor, without being able to furnish them with a lodging.—On the other side it was said to be a general rule, without exception, that parish-officers cannot borrow money for any purpose whatever; that the inconvenience of vesting such an authority in them was manifest; for new inhabitants might be called upon to pay money borrowed before they became parishioners, and for purposes from which they could derive no benefit; that it was impossible the court should intend that the rate was not made for the very purposes expressed on the face of it, by the persons who made it; that the present objection would not have been competent, on an appeal from the allowance of the overseers' accounts, for in such case nothing can be objected, but that the money has not been applied to the purposes for which the rate was made. Lord *Mansfield absent*—*Willes*, J. Can we reject as surplusage what is a material part of the title of the rate? If we cannot, *is a rate to repay money borrowed*, good? *Tawney's case* is in point to this, that *a rate cannot be made for the express purpose of reimbursing* an overseer for money advanced by him, *even within his year*. As to an appeal against the overseers' accounts, is a parishioner to be obliged to pay money, and to be turned round in that manner to get it back, if levied without authority? The rate cannot be supported.—*Ashhurst*, J. of the same opinion.—*Buller*, J. This rate imports to be made for two purposes; and we are desired to consider it as only made for one. I conceive that a rate cannot be made for money borrowed, even though within the year. *Tawney's case* goes that length; for it is not confined to the *mandamus*. If it were otherwise, the inconvenience might be very great.—The rule made absolute. 1 *Doug. Rep.* 116.

In what proportion the poor's rate may be made.

By 17 *Geo.* 2. *c.* 38, 'where any person shall come into or occupy any house, land, or hereditament, out of which any person assessed shall be removed, or which at the making such rate was empty, every person so removing from, and every person so coming into the same, shall be liable to pay to such rate in proportion to the time that such person occupied the same, as if such person so removing had not removed, or such person so coming in had been originally rated, which proportion in case of dispute shall be ascertained by any two justices.' *s.* 12.

It is said by *Dalton*, that the most reasonable way of taxing land, is according to the pound rate, and where a personal estate, as goods, money, or the like, is taxed, it ought to be in the same proportion as the lands, *viz.* the value of every 100*l.* at 5*l.* *per cent. per ann.* *Dalton*, *c.* 73.

But the rent of houses or lands is no standing rule for mak-

ing a poor rate, for circumstances may differ. *Comberbach*, 478.

And the justices cannot make a *standing rate*; for if it be just at first, it may not be so after, for lands may be improved. 2 *Salk*. 526.

Also by the stat. 43 *Eliz*. the taxation ought to be equal; therefore it ought to be continually altered, as circumstances alter *. 2 *Salk*. 526.

Neither is an assessment according to the land tax good; for in the case of the *King* v. *Clerkenwell*, *Hil*. 2 *Geo*. 1. where a poor's rate was made according to *the land tax*; it was objected to, as not being an equal taxation, because the personal estate in the public funds was not chargeable to the land tax, but that it is to the poor's tax. The whole court for that reason set it aside. *Foley*, 12.

And the justices in sessions are the proper judges of the *proportion or equality* of poor's rates—therefore in the case of the *King* v. *the Churchwardens of Weobly*, *Tr*. 19 *Geo*. 2, the court refused a mandamus, directing to insert the names of particular persons in a poor's rate upon affidavit of their sufficiency, and being left out to prevent their having votes for parliament men, for that the remedy was by appeal, and this court never went further than to oblige the making the rate †, without meddling with the question who is to be put in or left out, of which the parish officers are the proper judges subject to an appeal. 2 *Strange*, 1259.

But if it clearly appears upon the face of the rate itself, or by the circumstances disclosed by the justices on which they proceeded, that the assessments are unequal, the court will quash the rate. 1 *Bott*, *Const's ed*. 82. *Cowper's Rep*. 579. *Caldecot*, 93. 2 *Doug*. 8*vo*. *ed*. 562. 6 *Term Rep*. 154.

Thus in the *K*. v. *Mast*, *Hil*. *Ter*. 35 *Geo*. 3. the case was as follows: A poor rate for the parish of *St*. *Neots* was, on an appeal by the defendant, confirmed by the *Huntingdon* sessions, subject to the opinion of the court on the following case: The defendant, the appellant, was rated for premises at 130*l*. *per annum*, which was *the real annual value thereof*. In the same assessment, one *Fowler* was rated for certain premises at 29*l*. *per annum*, whereas the real annual value thereof, in consequence of improvements made by him, was 175*l*.; the same person was also assessed at 30*l*. *per annum*, for premises worth 45*l*. 12*s*. 6*d*. and 200*l*. *per annum*, for a farm and lands worth 250*l*. One *Goreham*, also, was in the same rate assessed at 38*l*. *per annum* for several premises altogether worth 121*l*.—The principal ques-

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* But although an ancient rate is not obligatory, and cannot stand in relation to the future payment of rates; yet *if there has been no improvement*, it may be a good reason *to continue* the ancient rate. *The K*. v. *Wrexham Regis*, *Tr*. 2 & 3 *Geo*. 2. 1 *Bott*, *Const's ed*. 80.

† See the case of *the King* v. *Barnstaple*, in p. 714 supra.

tion that arose in this case was, whether every person is to be rated to the poor according to the full value of his estate with all its improvements? which the court decided in the affirmative as above stated. But it was urged by the counsel who argued in support of the order of sessions, that in questions of this kind the justices have a discretion upon the subject, and that therefore the court was not bound to quash the rate, unless it evidently and unequivocally appeared to be unequal.—But by lord *Kenyon*, Ch. J. *Whatever be the proportion of rating in a parish, whether to the full value or otherwise, the rate must be equally made on all persons;* there cannot be one medium of rating for one class of persons, and another for another class. Now here it appears that the appellant was rated at the full annual value of every thing that he possessed, while other inhabitants were not rated at a third of their estates. With regard to the discretion of the justices; if indeed they had confirmed this rate generally, without disclosing to us the grounds on which they proceeded, we could not have quashed the rate, because the inequality does not appear upon the face of it; but they have disclosed those grounds; and on the case as stated it is impossible not to say that they have made a mistake. This rate appears so defective throughout, that it cannot be amended; it must be quashed. The other judges concurred.—Order of sessions quashed. 6 *Term Rep.* 154.

And the occupier of a house or of an estate, ought to be rated according to its full value with all its improvements, and not according to the price which he may have paid for it, without taking into the account the value of the improvements. —This was decided in the said case of the *K.* v *Mast*, *Hil. Ter.* 35 *Geo.* 3. where lord *Kenyon*, Ch. J. delivered himself to the following effect; the assessment for the relief of the poor ought to be so contrived, that each inhabitant should contribute in proportion to his ability, which is to be ascertained by his possessions in the parish. *Every inhabitant ought to be rated according to the present value of his estate, whether it continue of the same value as when he purchased it, or whether the estate be rendered more valuable by the improvements which he has made upon it.*—If a person choose to keep his property in money, and the fact of his possessing it be clearly proved, he is rateable for that; but if he prefer using it in the melioration of an estate or other property, he is rateable for the same in another shape. Suppose a person has a small piece of land in the heart of a town, which is only of small value, and he afterwards build on it, he must be rated to the poor according to its improved value with the building upon the land. In short, in whatever way the owner makes his estate more valuable he is liable to contribute to the relief of the poor in proportion to that improved estate. *Ashhurst* J. and *Grose* J. concurred. 6 *Ter. Rep.* 154.

And the lessee of lands ought to be rated to the poor according to the present value of the lands, if the same have become of greater annual value than the rents reserved by the leases. The *K.* v. *Shingle*, *Ea.* 38 *Geo.* 3. 7 *Ter. Rep.* 549.

Yet the court will not intend the rate to be unequal, although it appear that the lands and houses are not rated alike. Thus in the case of the *K.* v. *Brograve*, *M.* 10 *Geo.* 3. it was moved to set aside an order of sessions confirming a rate allowed by two justices, whereby the occupiers of land were assessed at three-fourths of the yearly value, and the occupiers of houses at only one half; which it was contended upon the face of it appeared to be unequal, because the tax was upon the occupier at the yearly value, and in that case there can be no reason for any distinction between lands and houses.—But by lord *Mansfield*, If we were obliged to quash this rate, it would be because it appeared upon the face of it glaringly bad and unequal.—Mr. Justice *Yates*. Unless the rate appears upon the face of it to be self-evidently unequal, we cannot interpose; for it is a clear settled rule, that we cannot decide upon the inequality; besides, there is a great difference between lands and houses, occasioned by the repairs and dangers incident to the latter*. I therefore think that the rate ought to be confirmed, and that it has properly distinguished between one sort of property and another.—Rule discharged. 4 *Burrows*, 2491. 1 *Bott*, *Const's ed.* 81.

So in the *K.* v. *Hardy*, *Ea.* 17 *Geo.* 3, a motion was made to quash an order of sessions confirming a rate made on *one-half* of the full yearly value, or rack rent of farms; and *on one moiety of one twentieth* part of all stock, personal estate, and money out at interest, valuing the interest of each twentieth part at 4*l. per cent.*—But by lord *Mansfield*. Unless we see that upon the face of the rate it is unequal, we cannot interfere. Here the justices have thought it equal, and I do not see any thing in the case that shews the party complaining is prejudiced. —*Aston*, J. If the rate does not appear to us to be unequal, we cannot quash it; and so it was held in *the K.* v. *Brograve*. —*Willes* and *Ashurst*, Justices, were of the same opinion.—*Per Cur.* Rule discharged. *Cowper's Rep.* 579.

So also in the *K.* v. *Butler and another*, *E.* 20 *Geo.* 3, it was objected against a rate made by the parish officers of *Swannage*, otherwise *Sandwich*, confirmed by the sessions, that no difference was made in assessing tenements and farms consisting of land, and cottages, or dwelling houses, whereas the clear income of the former was 1*d.* in the pound, to three farthings in the pound of the latter; and that it had been the custom to rate

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* But whether houses are to be rated in a different proportion from land, must depend on local circumstances. See the case of *the K.* v. *Sandwich*, infra.

them nearly in that proportion until the year 1778, when at a public vestry, both lands and houses were rated at 1*d*. in the pound. In support of the rule to quash the order of sessions it was contended, that the practice which had immemorially prevailed in the parish, of making a difference between land and buildings, was founded in justice: that the articles of repairs, window tax, &c. necessarily reduced the rent of houses, but that land was not subject to such, or any other equivalent deductions from the amount of its produce, and that the propriety of a regulation which adopted this distinction was strongly recognized* in *the K.* v. *Brograve*.—But by lord *Mansfield*, The question before the court is, does the rate upon the face of it appear to be equal or unequal? Unless it is manifestly unequal, the court will presume it equal. Circumstances may vary the value of different estates, and if this plainly appear, then what is said in *the K.* v. *Brograve* applies; but you take an advantage of an obiter saying of the court in that case, when the true legal ground of the authority is decisive against you. The other judges concurring—Rate affirmed. *Caldecot*, 93.

And afterwards in *the K.* v. *Sandwich* alias *Swannage*, *Hil.* 21 *Geo.* 3, certain occupiers of lands there, appealed to the quarter sessions against a poor's rate, setting forth in their notice of appeal, among other objections, that the rate was unequal and partial, because tenements and farms, consisting of houses, lands, or grounds, were in such rate or assessment charged and assessed 1*d*. in the pound, and cottages or dwelling houses at only three farthings in the pound; *whereas such cottages or dwelling-houses ought to have been rated and assessed on a par with tenements and lands at* 1*d. in the pound*†. Upon hearing this appeal, the sessions quashed the whole rate, and ordered a new equal assessment, stating the following case for the opinion of the court.—That it was proved on hearing the appeal, that the rate was made with the above distinction as to lands and cottages; that from the year 1735 to 1776 a constant distinction had been observed in rating houses and lands, the former having always been rated in less proportion to their rents than the latter; that the land in general is burthened with no particular charges that are not incident to land in general; but that both lands and houses are subject to the usual repairs and taxes generally incident to each respectively.—The proceedings having been removed by *certiorari*, the case was now argued, and in support of the order of sessions it was said, that in this parish there were circumstances which well warranted an equal assessment on each species of property; and it was suggested that *nine-tenths of the burden of the poor*

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* By *Yates*, J. see p. 727 supra.

† Upon the principle in the preceding case from the same place the year before.

arose from the houses.—By lord *Mansfield*. There can be no general rule as to the proportion between lands and houses. It must depend on particular local circumstances. There are no circumstances stated in this case to shew, that houses ought to be rated lower; and if what is suggested is true, that is a strong circumstance the other way.—The objection unavoidably goes to the whole rate; for it is made throughout by a rule and proportion which the justices thought wrong; and therefore they could do nothing but quash the whole.—The order of sessions confirmed. 2 *Doug* 8*vo. ed.* 562. *Caldecot's Cas.* 105.

But if it expressly appear on the face of a poor's rate that the several proportions in which real and personal estates are assessed are unequal, the court will quash the rate.—Thus in *the K.* v. *Lakenham*, *Hil.* 25 *Geo.* 3, it being moved to quash an order of sessions on confirming a poor's rate, upon an objection that it was unequal and unjust, and it appearing that the mode adopted for unequal assessment of the real estate was *one moiety* of the rack rent, and of the supposed stock, personal estate or money out at interest, *one fortieth part of the interest* thereof at 4 *per cent.**—lord *Mansfield* said, that he thought this case different from *the K.* v. *Hardy*, for that here the inequality was apparent on the face of the order, but he desired it to stand over to try if the parties would not come to some terms; and now the parties not having come to terms, THE COURT said, that it appeared on the rate, that the proportion of one person to another was unequal, and therefore the rate must be quashed. 1 *Bott*, *Const's ed.* 587.

### ii. *Rating parishes in aid.*

Two justices may rate one parish within the hundred in aid of another parish.

'By 43 *Eliz.* c. 2, if the justices do perceive that the inhabit- 'ants of any parish are not able to levy among themselves a suf- 'ficient sum for the purposes aforesaid, then the said two jus- 'tices (1 *Qu.*) shall tax, rate, and assess as aforesaid ANY 'OTHER OF OTHER PARISHES or out of any parish within the hun- 'dred where the said parish is, to pay such sums to the church- 'wardens and overseers of the said poor parish for the said 'purposes, as the said justices shall think fit. *s.* 3.

And if such parish is not able, the sessions may rate any parish within the county.

'And if the said hundred shall not be thought by the said 'justices able and fit to relieve the said several parishes unable 'to provide for themselves, then the justices at their general 'quarter sessions shall rate and assess as aforesaid ANY OTHER OF 'OTHER PARISHES or out of any parish within the said county 'for the purposes aforesaid.' *s.* 3.

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* By this mode of assessment, the real estates, the rental whereof amounted to 43,470*l.* contributed towards a quarterly rate of 2,298*l.* the sum of 2,171*l.* and the supposed personal estates, amounting to 1,269,500*l.*, only 127*l.*

In the construction of the above clause the following points seem to have been holden.

First, that the justices may, from the words *any other of other parishes*, tax *particular persons* * in aid to that parish which cannot relieve its own poor: or they may assess *the whole parish* in a certain sum in gross, and leave it to the churchwardens and overseers to levy the same; but that the justices cannot alter and annex parishes to one another. *Skinner*, 258. *Comberbach*, 300. 1 *Vent.* 359. 2 *Salk.* 480. 1 *Bott*, *Const's ed.* 307. 2 *Strange*, 1114.

But the justices cannot authorise the churchwardens and overseers or any other persons to make the rate and assessment, but they are themselves to make the rate on all, or on particular persons†. 16 *Viner's Abr.* 416. 431. 2 *Strange*, 1114.

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* In the case of *the K.* v. *Boroughfen*, *Tr.* 12 *Geo.* 1. the Court were of opinion that an order in this way was hard and unreasonable, since particular persons of other parishes would be much exposed to the mercy of the justices; and that such a power was hardly to be trusted with them, for they may rate some and excuse others altogether as well able to pay. But they said that the words of the statute are very strong. There are two ways by 42 *Eliz. c.* 2. to make one parish contributory to the poor of another, *viz.* the justices may either tax particular persons in aid to the parish which cannot relieve its own poor, or they may assess a whole parish in a particular sum, and leave it to the churchwardens and overseers to levy a contribution, which may be in gross by adjacent parishes yearly. 1 *Bott*, *Const's ed.* 307.

†Thus in the case of the parish of *St. Peter and Paul*, *Tri.* 12 *Geo.* 2. two justices, reciting the inability of *St. Mary the Virgin* to maintain its own poor, *order* the churchwardens of *St. Peter and St. Paul* to assess, raise, and levy sixty pounds for the maintenance of the poor of the other parish. An objection was made to their ordering such *a gross* sum; but the court held it well in that respect. But the order was quashed, because the justices had delegated their power of assessing and rating the parishioners to the churchwardens and overseers; whereas by 42 *Eliz. c.* 2. *s.* 3, the justices are to make the rate on all or on particular persons. 2 *Strange*, 1114.

And if the justices refuse to make this rate, they may be compelled thereto by mandamus; for in this case a mandamus was moved for by the justices to make a rate for the support of the poor of *St. Mary's*, which was opposed, because the parish officers ought to make the rate, and the justices are only to sign

And the order must be to raise such a sum certain, and not to make a rate at so much in the pound, for that is uncertain, and therefore bad. *The K.* v. *Telscombe*, *Tr.* 6 *Geo.* 1. 1 *Strange*, 314.

Secondly, That the order for levying money upon a parish in a hundred in aid of another parish within the same hundred, must according to the stat. 43 *Eliz.* c. 2, s. 8. be made by two justices out of sessions and not *originally* at sessions; because that statute gives an appeal from the acts of two justices; and by making the order originally at sessions that might be prevented. *Foley*, 32. 5 *Mod. Rep.* 397. *Cases of Set.* 259.

But that the orders for rating parishes *out of the hundred* must be made originally at the sessions; and it is not necessary that *two justices* should previously adjudge the hundred incapable to contribute *. 1 *Strange*, 56.

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it; to which it was answered, that this motion was grounded *on this clause of the statute*; and thereupon the mandamus was granted, directed to the justices. 16 *Viner's Abr.* 416.

* This was determined in *the K.* v. *Percival*, *Tr.* 3 *Geo.* which was as follows; the justices in sessions tax certain parishes in the hundred of *A.* in aid of the parish of *B.* in the hundred of *C.* Objection was made, that the statute gives no authority to the sessions to charge people out of the hundred, till two justices have enquired whether any parish in the hundred can contribute; the first application to be to two justices, and the second to the sessions.—But by *Parker*, Ch. J. I do not see to what purpose it would be for the justices to make an order only to adjudge that no parish in the hundred is able to contribute; we will presume the sessions is satisfied of that; and if two justices should make such an adjudication, yet the sessions must inquire into the truth of it; and if no order appears which charges any parish within the hundred, it is a sufficient ground for the sessions to act. If two justices had charged any parish within the hundred, that would have stopped the sessions from proceeding. The sufficiency of the hundred depends on this, Whether two justices have ever charged the hundred? If two justices should adjudge the hundred not able, yet if other two justices judge the contrary, their charge would be good, and the sessions be ousted of their jurisdictions, notwithstanding the first determination.—*Eyre* J. Here are two jurisdictions, that of the justices and that of the sessions, and they are both original jurisdictions; they are different in all respects; for the two justices have no power out of the hundred, nor the sessions in it.—Order confirmed. 1 *Strange*, 56.

Thirdly, That the inhabitants of an *extraparochial place* may be taxed to the relief of an adjoining parish, for the act mentions any place *. *Foley*, 28.

And where the inhabitants of an extraparochial place are taxed towards the relief of the poor of an adjoining parish, they may be taxed in general, and they may proportion the particulars upon every inhabitant; or the tax at first may be laid upon every person by himself. *The K.* v. *Clarendon Park*, 16 *Viner's Abr.* 431.

Fourthly, It has been determined, that one of the vills in the same parish may be ordered to contribute to the relief of the other vill.—The case was thus; *Hil.* 8 *Ann*, two justices having made an order, it appeared that there were two vills in one parish, and the order recited, that one of the vills was very rich, and the other vill very poor, &c. It was objected, that one vill ought not to contribute to the relief of another vill, because the statute mentions parishes only.—But by THE COURT, Surely this will come within the equity of the statute, though the statute only make mention of *parishes*; and it is highly reasonable that one vill should contribute to another in the same parish. *Foley*, 25.

But in the same case it having been further stated that the vill which was rich did not pay half so much to the poor as the poor vill did, it was objected that this reason for charging the rich vill to contribute to the poor vill was uncertain, *because they did not shew that* either vill paid any thing to the poor; and by THE COURT, the order must be quashed for the uncertainty. *Foley*, 25.

Fifthly, Upon an order rating others in aid, it must be expressly stated that the parish which prays aid of another was not able to pay sufficient sums, and there must be an assertion or adjudication that it appeared so to the justices who made the order. *Combatt* v. *St. Mary Lincoln.* 16 *Viner's Abr.* 431.

So also it must appear upon the face of the order, that the parish that is charged to aid the parish that is not able to maintain its own poor, is within the same hundred. *Case of the Inhabitants of Boroughfen*, *Tr.* 9 *Ann*, *Foley*, 27.

Therefore it has been determined that parishes in a city are not to be made contributory; for in the case of *St. Benedict's*, *Hil.* 8 *Ann.* an order having been made by two justices to assess the parishes of *St. Stephen* and *St. Magdalen* in *Norwich*, in aid of the parish of *St. Benedict*, which was not able to maintain its own poor; it was objected, that these parishes are not within the same hundred; for they are in the city of

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* The words of the statute are, "any other of other parishes, *or out of any parish.*"

*Norwich*, and in cities there are no hundreds, and therefore the two justices have no jurisdiction by 43 *Eliz.* c. 2. *s.* 3. And by *Holt*, Ch. J. the order must be quashed*. *Foley*, 31.

Neither can the justices of the county rate a parish within their jurisdiction, in aid of one situated within a district possessing an exclusive jurisdiction.—*The K.* v. *Holbeche and another*, *Tr.* 32 *Geo.* 3†. 4 *Term Rep.* 778. *Nolan's Rep.* 121.

But any division equivalent or synonymous to a *hundred* is within the statute:—therefore in the K. v. *Milland*, *Ea.* 31 *Geo.* 2, two justices made an order for taxing the tithing of *Milland*, in aid of the parish of St. *Peter* in the same county, which was confirmed at the sessions, who state upon their order that the tithing of *Milland* lies in the same liberty of the *soke* where the said parish of *St. Peter* lies; it was objected, that

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* The like point was also determined in the case of the said parish of *St. Benedict* v. *Peter's* in *Norwich*, *Tr.* 8 *Ann.* But it was said by *Powel* J. to which the others agreed (*absente* Holt) that though *two* justices have no power, there being no hundred, yet the sessions have a jurisdiction, and may tax the county of the city in part or at large. 11 *Mod. Rep.* 269.

† The case of the K. v. *Holbeche et al.* was as follows: A rule had been obtained calling on the defendants, justices for the county of *Worcester*, to shew cause why a mandamus should not issue, commanding them to tax, rate, and assess some parish within the hundred of Half-shire in the same county, in aid of that part of the parish of *Dodderhill* which lies in the borough of *Droitwich*, being in the said hundred and county; it appeared from the affidavits that the part of the parish which was within the borough, had immemorially maintained its own poor, and had distinct overseers.—The principal objection was, that the justices of the borough of *Droitwich* have an exclusive jurisdiction over it, by reason of a non-intromittant clause in their charter, and the defendants as justices of the county cannot act therein; that the 43 *Eliz.* *c.* 2. *s.* 8. (see p. 673 supra) gives such borough justices *within their jurisdiction*, the power of rating in aid as well as all other powers; and therefore the justices of the county have no more jurisdiction in this case, within that district, that in any other. And the court were of opinion, from a view of all the sections in the 43 *Eliz.* relative to this point, that *magistrates, to make one parish contribute* towards the support of the poor of another, *must have a jurisdiction over the parish wanting such assistance*, and therefore discharged the rule. *Nolan's Rep.* 121. 4 *Term Rep.* 778.

it does not appear that the places are in the same hundred (as required by the 43 *Eliz.* c. 2;) that "liberty" and "*soke*" are vague terms, and not equivalent to the known legal terms "*hundred*," but perhaps the liberty may extend into several hundreds.—But THE COURT did not consider themselves as bound down by the particular word "*hundred*" used in the act; but that if any *division* be called by any name synonymous or equivalent to that of *hundred*, it must be equally within the intention of the act. 1 *Burrow's Rep.* 576.

Sixthly, the order must shew that the contributory parish is out of the parish to which the aid is given—for in the case of the *K.* v. *Boroughfen*, *Tr.* 12 *Geo.* 1, an objection was taken that it did not appear by the order but that *Boroughfen* was within the parish of St. *John the Baptist*, in aid of which they are rated.—BY THE COURT. You must shew that *Boroughfen* is out of the parish of *St. John the Baptist*, or the justices have no jurisdiction: and for this objection the order was quashed. *Foley*, 29.

And where an order was made by two justices 'to contribute 'until we see fit to order to the contrary,' it was objected, that the act does not give the justices any such authority, and that it was in effect making a perpetual order; for if one of the justices should die, or be removed, no other justice could alter it: and it was quashed upon this objection.* Case of the *Borough of Marlborough*, *Ea.* 12 *Geo.* 1. 16 *Viner's Abr.* 416.

And a rate on one parish in aid of another may be made in incorporated districts, if the incorporating act has reserved the right. In *K.* v. *St. Helen*, *Worcester*, Tr. Ter. 42 Geo. 3, it appeared that the several parishes in the city of Worcester, had been incorporated by a local act of parliament, passed 32 Geo. 3. c. 99, in which there is contained a proviso that "nothing in that "act shall extend to repeal, lessen, or alter the power of jus- "tices of peace, to tax in aid of others by virtue of the stat. "43 Eliz. or otherwise, but that the same powers shall be and "remain as fully and effectually to all intents and purposes, "as if this act had never been made." An order for a rate in aid of one of the incorporated parishes having been made upon another of them, it was objected to this order that the proviso applied merely between the incorporated parishes, and other parishes in the county at large. BUT THE COURT held that the several parishes of the city which subsisted distinctly before the act, still continued to be as distinct as before, for all purposes whatsoever, except only those for which they were incorporated, and that under this proviso which reserves power to the jus-

* For though where one parish is unable to relieve their poor, the next parish being ablest to aid them, *yet when the cause ceases, the allowance is to cease also.* 16 *Viner's Abr.* 43. pl. 6.

tices to tax parishes in aid of others, the incorporated parishes were still to remain independant as before, whenever the respective quotas directed to be raised by this local act were found insufficient to provide for the maintenance of their respective poor. 2 *East's Rep*. 417.

### iii. *What persons and property are liable to be rated.*

The poor's rate ought to be made according to *the visible estate* of the inhabitants *both real and personal**, and no inhabitant is to be taxed to contribute to the relief of the poor in regard of any estate he hath elsewhere in any other town or place, but only in regard to the visible estate he hath in the town where he doth dwell, and not for any other land which he hath in any other place or town. *Sir Anthony Earby's Case*, 2 *Bulstr*. 354.

The poor's rate must be assessed upon property within the parish and not elsewhere.

And lord *Mansfield*, in the *K*. v. *Andover*, said, that where personal property is rated, it must be *local visible* property *within the parish*. *Cowper's Rep*. 565.

But although a person dwell in another parish, yet if he hath lands in the parish of *A* in his proper possession, and manurance, he is in law a parishioner of A; for the place where he lies, sleeps, or eats, doth not make him a parishioner there only; but as he manures lands in *A*, and by that is resident upon it, that makes him a parishioner of *A* also as to this purpose; for if he should not be charged for those lands which he himself occupies, then no person would be charged with them; upon which great inconvenience would ensue, for a person who inhabits in one town may occupy the greatest part of the lands lying in another. 5 *Co. Rep*. 66.

What persons deemed inhabitants.

And if a man useth only part of a house, he is to be considered as in the occupation of the whole, and rated accordingly, although the rest is unoccupied. *The K*. v. *St. Mary the Less*.

This case was as follows; The overseers had rated the Rev. Mr. *Egerton* as occupier of a house, garden, and stable, of the value of 24*l*. *per annum*. He appealed against the rate on the ground that he occupied no more than two rooms of the house, together with the garden, and should have been rated for them only, which were of the yearly value of 5*l*. The sessions being of that opinion, ordered the rate to be amended; but stated a case for the opinion of the court on the question of the appellant's occupation, whereby it appeareth that a former occupier of the whole premises, previous to the appellant's pur-

Occupiers of premises in part only.

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* In the *K*. v. *St. Leonard, Shoreditch*, *Mic*. 11 *Will*. 3, a rate which was made and confirmed by two justices, wherein nothing was taxed for the *personal* estate, but all upon the *real*, having been upon appeal to the sessions quashed, and a new rate ordered upon both real and personal estate, such orders were confirmed. *Salkeld*, 483.

chase thereof, had been rated at 24*l.*—that since his purchasing the same, they had been unoccupied, except as after mentioned, *viz.* The appellant principally resided in his prebendal house in the college at *Durham*, but frequently for amusement used a throw or lathe, and other turning instruments, in one of the rooms of the house in question, for an hour or two in a day, in which room there were three chairs and a table, and during the winter season occasionally a fire; in another of the rooms he had frequently kept corn for his horse; the garden, worth 40*s. per annum*, he occupied, and the gardener sometimes put his flower pots, shrubs, and tools, in another part of the house, where lumber was also sometimes put; but no person had ever slept or lodged in the house, except a poor man and his wife, who were permitted to live rent-free in the kitchen, between which and the rest of the house the door communicating was stopped up; that the stable was unfit to be used as such, but the appellant in several hunting seasons had used it, together with a small yard, as a kennel for his hounds; that five years before a person had offered 25*l.* a year for the premises, which had been refused. By lord *Kenyon*, Ch. J. It is stated that this gentleman occupied the garden and part of the house, his servants other parts, and a poor man another part; but these occupations were not distinct from his own, he must therefore be considered as having the entire occupation of the premises, and ought to be rated for the whole; for it would be attended with great inconvenience to draw such a line, as has been attempted in this case, between the occupation of one part of the house and another.—*Ashhurst*, J. I am of the same opinion. He is occupier of the whole house, and may use every part of it when he pleases: it would be very inconvenient to inquire in each particular case, what rooms of the house the owner occupied before he could be rated.—*Grose*, J. I consider the appellant as the occupier of the whole house. If a person were to shut up his garrets, it would be no ground to exempt him from being rated for the whole house. *Nol. Rep.* 21. 4 *Term Rep.* 477.

But if *two several houses* are inhabited by several families, who make and have but one common entrance or avenue for both; yet each house continues rateable severally; and if one family goes, one house is vacant. So if one tenement be divided by a partition, and inhabited by different families, *viz.* the owner in one, and a stranger in the other, these are several tenements, and may be rated severally, while thus severally inhabited. 2 *Salk.* 531.

And the overseers *can only assess the occupier* of the land, and not the lessors or landlords who receive the rents; for by the law *the occupiers of the land are only to be charged*, and this in regard of their possessions, and not the lessor or landlord, in regard to the rent received. 2 *Bulstrode*, 354.

And in the case of *Wheed* v. *Starky*, *Mic.* 11 *Geo.* 1, where the lessor had covenanted with the lessee, *to pay all taxes on the land* demised; and the lessee brought an action of covenant, and assigned for breach the not paying of the rates to church and poor: upon demurrer it was objected by the lessor the defendant, that these rates are personal charges, *and not on the land*; and for that reason he had judgment. 8 *Mod. Rep.* 314.

For the poor's rate is only a charge in respect of the land, and not a charge upon the land nor payable out of it, for the personal estate only is subject to it. *Case* v. *Stephens*, *Fitz.* 298.

It seems that no *persons* whatsoever, or at least no subjects, are, in respect of their landed property, so privileged as to be exempt from this contribution. *Caldecot's Cases*, 152.

Neither are any *places* exempted, unless as being appropriated to some public, or charitable, or religious purposes. *Caldecot's Cases*, 152.

Bishop's palaces.

Thus it has been adjudged, that a *bishop's palace* is rateable, because there can be no prescription against the payment of this tax. 3 *Keble* 572.,

Corporate bodies.

So a *corporation* seised in fee of lands for their own profit are, within the meaning of 43 *Eliz. c.* 2, *inhabitants* or *occupiers* of such lands; and in respect thereof liable in their corporate capacity to be rated to the poor---Thus, in the *K.* v. *Gardener*, *Tr.* 14 *Geo.* 3, the master and fellows of the college of *Catherine Hall*, *Cambridge*, purchased five houses in the parish of *St. Botolph*, of the annual rent of 55*l.* and, being so seized thereof, pulled the same down, and converted the ground upon which they formerly stood towards erecting some premises in addition to the college, and for enlarging the master's garden and the area of the college. The master and fellows were assessed for these purchased premises to the poor's rate; and the question was, 'whether the master and fellows, 'being a body corporate, were liable to be rated?' And in support of the negative it was contended, that corporations are not rateable, because the remedy of imprisonment, upon failure of distress, is impossible; and the remedy of distress alone inadequate. That corporations were not in the contemplation of the legislature under the 43 *Eliz. c.* 2; for that the word "*inhabitants*" in that statute means inhabitants that can be *committed* upon failure of a *distress*. That nothing can be rated which does not yield a profit; and with regard to the profit accruing from the area in this case, the subject matter excludes the possibility of rating it; for nothing is more apparent than that where property is the subject of a rate, the value of it must be certain, because the measure of the profit is the measure of the rate. But here nothing is or can be received, and therefore there can be nothing to pay.---But by lord *Mansfield*, Ch. J. In this case the question is, whether a corporation seised in fee for their own profit is rateable or not? and de-

pends upon this point, whether in law a corporation may not be considered as occupiers or inhabitants? By the statute of 43 *Eliz.* c. 2, all lands and all real property are rateable to the poor, and must have occupiers and inhabitants in consideration of *tax*: therefore, if a man have no tenant, and is seised of premises in fee, he is said to occupy them himself, or by his bailiff, or agent. Most of the old colleges are extraparochial, and upon that ground they are not rateable. But except upon that foundation, there has been no instance that a corporation is exempted from this tax; and I can find no authority in point of law which says they cannot be rated. But there are some that go very far to prove the contrary. The authorities shew that corporations are rateable both as inhabitants and as occupiers, in respect of the repairs of bridges and churches; and if liable in respect of the repairs of bridges and churches,* they are equally so within the purview of the statute 43 *Eliz. s.* 2. As to the objection that these areas yield no profit, and therefore ought not to be rated, the answer to that is, that the value is in the judgment of the assessors. If lands undergo any alteration, the assessors must take all the circumstances into their consideration, when they are about to fix the value: it would be an absurd rule to say, that lands not covered with houses should pay the same as they did when houses were standing upon them. The rates must be according to the value of the thing to be rated, and the duties increase according to the increase of agriculture or improvement. But it seems a very extraordinary thing for the college to suppose, that they are to take in all these lands and pay nothing for them. I do not say what value is to be set upon them, nor will this determination give a sanction to the particular value fixed by the present rate; but they must be of some value; and whatsoever the *quantum* may be, I am of opinion that the college in its corporate capacity is rateable in respect of it.--- *Aston* J. I concur. The premises in question must be of some value: and as to the *quantum*, it is the province of the overseers to decide, and not the court. I have no idea but that a *corporation* may be *occupiers*; as such, they may have inspection of the rates; and upon application to the court for that purpose, it would be no answer to say that they are an invisible body; for they may inspect them by their servants, and the court would punish a refusal by attachment. As to the *remedy* of levying a duty upon a corporation, the books all agree that it can be levied, though they differ in the mode. *Sheppard*, in his treatise upon corporations, says, "If a sum "of money be to be levied upon a corporation, it may be "levied upon the mayor or chief magistrate, or upon any "person being a member of the corporation." But the case

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* See title Bridges in vol. i.

of the city of *London* concerning the duty of water-bailage is different, and is thus: "NOTE, It was said that for a duty or "charge upon a corporation, every particular member thereof "is not liable; but process ought to go in their public capa-"city." And this is the right law. In *Thursfield* v. *Jones*, the corporation were cited, not by their *proper* names, but in their *politic* capacity: and the court said, "If the company "had neither land nor goods, there was no way to make them "appear: but if they stood out, then they must lie by the "heels in the natural capacity." Therefore, the idea that a corporation is not liable to be rated, nor amenable by process in respect of a rate, is not well founded; besides, by a late act, 17 *Geo.* 2. c. 38, the remedy of distress is extended beyond the particular parish into other precincts, and even into other counties; so that their property is answerable, though they cannot personally be punished. Therefore I am clearly of opinion, that as a corporation, they are liable to be rated. *Willes* and *Ashhurst*, Justices, concurred. *Cowper's Rep.* 79.

Royal palaces.

But *royal palaces* in the occupation of the royal family, are not rateable to the poor: yet *servants* occupying separately house and land belonging to the crown, whether they pay for the same, by *rent* or *service*, are rateable. The *K.* v. *Mathews**, *Hil.* 17 *Geo.* 3. *Caldecot's Cases*, 1.

So if the scite of a palace be demised to a subject, for a certain permanent interest, the grantees that occupy it are rateable for such property to the poor: for when the public purposes, which constitute the great ground of exemption, are no longer answered, they no longer retain this privilege. *Duke of Portland's Case*, *Hil.* 33 *Geo.* 2. *Wynne's Analysis*, 60. *Caldecot's Cases*, 153.

And parks.

So also the ranger of a royal park is rateable as such to the poor for the inclosed uncultivated lands in the park, yielding certain profits; but not for the *herbage and pannage* (which is the surplusage above the sufficient pasture of the game therein), which yields no profit. *Lord Bute* v. *Grindall*, *Tr.* 26 *Geo.* 3. This case came before the court on a special verdict, and there were two questions, *viz.* First whether the plaintiff as ranger or keeper of *The New Park* near *Richmond* in *Surrey*, was liable to be rated to the relief of the poor of the parish of *Putney in respect of* 199 *a.* 0 *r.* 12 *p. of inclosed lands being meadow and arable, part of the said park, and* 39 *a.* 1 *r.* 32 *p. of land, open to park pasture*, also part of the said park? Secondly, Whether plaintiff was liable to be rated, *in respect of the herbage and pannage of the said park?* It appeared that his late majesty *Geo.*

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* *Mathews* was rated to the poor rate for a keeper's lodge in *Windsor Great Park*, and two acres of land which he occupied as one of the keepers of the said park; and the order of sessions, confirming such rate, was confirmed by the court of *King's Bench.*

2, had duly granted to Lord *Bute the office of ranger and keeper of the New Park, during his pleasure* ; and also the *herbage and pannage of the said park*, over and above the keeping of the game therein ; and also three bucks and does every season, and also the wages of 6*s*. per day. That 230 *acres*, parcel of 269 acres in the parish of *Putney*, *are inclosed lands*, and 39 *acres*, residue thereof, *are open to park pasture*. That 106 of the 230 acres *are meadow*, and the remaining 124 *acres*, *arable land*. That the *meadow* has been *mowed*, and the *hay thereon made* by *haymakers, paid by the king*, who also *found the hay-seed*. That 66 loads of the hay when made have been yearly carried into the park by the king's servants, and there stacked *for the use of the deer*, and the *overplus* has been *stacked up* in one of the inclosed paddocks, *for the use of the king's and the ranger's horses*. That as to *the arable land*, when it has been sown with corn, *the ranger has found the corn seed* ; and *when* it has been *sown with rye grass or clover*, *the king has found the seed*. That it has been *manured*, *ploughed*, *and sown by the king's servants and horses*. That the *corn* has been *reaped by labourers paid by the ranger*, and when *carried to market sold for the benefit of the ranger*. That the *king has had no part*. That the straw has been used for thatching the hay ricks, and for the king's cart horses. That when it has been sown with clover or rye-grass, the king's and the ranger's horses have eat the hay, but it has never been sold. *That the profits arising to the ranger from the whole of the lands are worth* 100l. *a year*. That as to *the* 39 *acres open to park pasture*, *the ranger has not received any profits* at all from them. That *the herbage and pannage* of the said park *have yielded no profit* to the ranger ; and that no swine have been fed in the said park—By lord *Mansfield*, Ch. J. The question on this verdict is, whether the plaintiff is rateable at all ?—not for how much, or in what proportion ; *it is clear that he is not rateable for the herbage and pannage* *, *because they yield no profits*. But there is a parcel of land inclosed, which he sows, and afterwards reaps the corn from, to the amount of 100*l*. a year, therefore he is occupier, and *quo nomine* occupier can make no difference, whether by gift or for wages. *Buller*, J. It is perfectly immaterial what interest the occupier has in the lands, whether he holds as tenant at will, or by any other tenure: it is not necessary to enquire into the occupier's title. 1 *Ter. Rep.* 358. Affirmed in error in the exchequer chamber. 2 *Hen. Black. Rep.* 265.

* The general question whether this species of profit called *herbage and pannage* is rateable to the poor, was before the court in the case of *Jones* v. *Maunsell*, *Mic.* 20 *Geo.* 3, but never determined ; although the court inclined to the opinion that it was not rateable ; see 1 *Doug. Rep.* 8*vo. ed.* 302. But note, that in the above case of lord *Bute* v. *Grindall*, the reason assigned by lord *Mansfield*, why the *herbage* and *pannage* were not in that particular case rateable, was because they did not yield any profit.

But stables rented by the colonel of a regiment of horse by order of the crown, for the use of the regiment, are not rateable to the poor; for neither the possessions of the crown, or of the public, are liable, and the stables thus used must be considered as in the occupation of the public. *Ld. Amherst* v. *Ld. Somers*, *Ea.* 28 *Geo.* 3. Stables for the king's troop.

In this case the point turned upon the question, Whether lord *Amherst* could be considered in law as *the occupier* of the stables? And by *Ashhurst* J. It is clear that there is no actual occupation by the plaintiff, and that it is only used for the reception of the troopers' horses: neither can the persons who in turns work in the stables, be said to be the occupiers.—*Buller*, J. The question is, Whether the plaintiff *is or is not the occupier* of these premises? There is no case which is exactly applicable to the present. It has been contended, that the plaintiff is the occupier, because he is the lessee of the stables. But it appears on this case, that he did not contract as a general lessee; and it is material to consider the effect of THE SIGN MANUAL. It appears to us, that the plaintiff acted merely for the benefit of the public, by order of the crown; he contracted by leave of the crown, and is like a trustee for the public, deriving no benefit whatever to himself from the contract. For if he had acted for his own benefit, there would have been no occasion for the sign manual. Besides, it appears, that in point of fact, so far from the colonel's making use of these stables, his horses have never stood there. So that in no point of view whatever can the plaintiff be considered as the occupier.—*Grose* J. declared himself of the same opinion.

But in the case of *Eckersal* v. *Briggs*, *Mic.* 31 *Geo.* 3. where a private act of parliament for *paving* the streets of *St. Mary-le bone* had given the commissioners authority to rate all parish churches, and parochial and other chapels, schools, markets, *warehouses, and all other public buildings whatsoever;* and that the said rates should be paid by the churchwardens as to churches, and as to the other buildings, by *the respective owner or owners, proprietor or proprietors thereof*; a rate made upon the *lessee and owner* of stables rented in that parish by the colonel of a troop of horse, by the authority of the king for the use of the troop, was held good; FOR BY LORD *Kenyon*, Ch. J. the *public buildings* intended by the act are those which are applied to *public purposes*. A warehouse may be rated to *the proprietor*, or *the occupier*, according to the use to which it is applied. If it be let, for instance, to the excise or custom-house for *public purposes*, the burthen must be borne by the proprietor: but if it be afterwards converted to a private use, the occupier of it will be liable to this rate. So here the stables in question are used *for a public purpose* by the horse-guards, in contradistinction to *private occupation*; and as long as they continue to be used for this purpose, *there is no private occupier of them*. On this ground

proceeded the case of lord *Amherst* v. lord *Somers*, with which decision I perfectly coincide. Lord *Amherst* could not in any sense be considered as the occupier, so as to be liable to be rated; neither could the soldiers: so here, whilst these stables continue to be used by the guards, they cannot be considered to be in the *private* occupation of any one, but are *public* buildings, within the meaning of the act. 4 *Term Rep.* 6. 2 *Term Rep.* 372.

Officer of ordnance occupying a battery house.

But where the sessions found that the master gunner at *Seaford was the occupier* of the battery house, it was held that the express finding of that fact fixed his liability to be rated, although the battery house was the property of the crown, and from whence he was removeable at pleasure. *The K.* v. *Hurdis*, *Mic.* 30 *Geo.* 3. This case was as follows: Upon the appeal of *Hurdis* against a poor rate at the sessions at *Seaford*, the rate was confirmed, subject to the opinion of the court on the following case:—the appellant objected to the rate, that one *Wood*, gunner of the king's fort and battery at *Seaford*, who was a servant to his majesty, and not in his own right the occupier of the dwelling-house thereto belonging, and who therefore ought not to have been charged in the rate, was inserted therein and charged as the occupier of the battery house 10*s*. At the time of making the rate he was and still is master gunner in the said fort; the fort and battery house are the property of the crown; a master gunner is a warrant officer appointed, and removeable by the master general of the ordnance, though his office is usually considered as a provision for life. *Wood* being so employed, *occupied the whole of the house*, except one room, which is allotted to the under gunner by direction from the ordnance; and the furniture of this house belonged to *Wood*; the inhabitants paying to the poor rate have a right to vote for members for *Seaford*, and the appellant *Hurdis* is an inhabitant of that description. Against the order of sessions, it was contended, that *Wood* derived no beneficial interest from his occupation, independently of the necessary functions of his office; that it was not optional in him whether he would reside there or not, that he was compelled to be there, and therefore was in the same situation as a soldier in barracks, and no more than a mere sentinel and servant of the crown.—By lord *Kenyon*, Ch. J. It is expressly stated in the case *that Wood was the occupier of the battery house*: and though it might perhaps have been contended below, that he was not the occupier in the legal sense of the word, yet *the finding of the sessions precludes that question* here: it is not however a general position, that a servant of the crown, occupying a house in respect of his office, is not rateable for it: for the master of the rolls is always rated, and so are the auditors and tellers of the *Exchequer*. Soldiers, indeed, cannot be said to be the *occupiers* of their barracks in the legal signification of the word; they are no more than mere servants.—*Ashhurst* J. *Wherever persons are stated by*

*the sessions to be the occupiers of crown lands or houses*, they must be rated; though such property would not be rateable in the hands of the king himself. In the same manner, though hospitals, or lands held for their immediate support, are not rateable, yet if any officer of such establishments hold part of the hospital-lands for his own convenience, then he becomes rateable. Now *Wood* was the occupier in this case; and though he had not a life-interest, yet it is well known that such persons are never dismissed unless for misbehaviour; and even if he were to be considered as a mere tenant at will, that will not vary the case.—The other judges concurring, order confirmed. 3 *Term Rep*. 497.

Barracks.

But where the commanding officer in barracks had distinct apartments allotted to him, one in particular for transacting the business of the regiment, and the others fitted up for the accommodation of himself and family who resided there with him, containing among others a *kitchen, wash house, and coach house, together with a stable yard and garden*: He was held to be rateable to the relief of the poor in respect thereof, having a beneficial enjoyment of them beyond his necessary accommodation as an officer for the purpose of public service.—This was decided in *The K.* v. *Terrott*, *Ea. Ter.* 43 *Geo.* 3, and as Lord *Ellenborough*, Ch. J. in delivering the judgment of the court entered into a comprehensive review of all the cases on this subject, and said of the eight rooms besides attics (of which the premises consisted) one room is a store room, another a quarter for the adjutant, and a third an office for the commanding officer to transact the business of the regiment; *the rest of the rooms and offices are all devoted to the personal use and accommodation of the officer*. If the permanency and duration of the occupation and the quantity of interest, which the occupier has in the subject of such occupation, were not as laid down by *Buller* J. in Lord *Bute* v. *Grindall* generally immaterial, it would still form no question in the present instance, as the appellant has had a long and has a still continuing occupation. The principle to be collected from all the cases is, that if the party rated have the use of the building or other subjects of the rate, as a mere servant of the crown, or of any public body, or in any other respect for the mere exercise of public duty therein, and have no beneficial occupation of or emolument resulting from it in any personal and private respect then he is not rateable. But for the property of the crown in the *beneficial occupation of a subject*, whether he be a civil officer of the crown as in Ld. Bute's case (who was ranger of the New Park near Richmond) and in the case of the comptroller of *Chelsea* hospital, *Eyre* v. *Smallpage*, or as a military officer, as in *Hurdis's* case; he is in each case equally rateable; for in these cases each of the persons rated had a degree of personal benefit and accommodation from the property enjoyed by him beyond the mere public use of the

thing, and which excess of personal benefit and accommodation beyond the public use may be considered as so much of salary and emolument annexed to the office, and enjoyed in respect of it by the officer for the time being. But if the use of a residence upon the property be either as the servant of the crown and for public purposes only as in Ld. *Somer's* case, or as a mere public officer or servant, or of any other description, such as the superintendant of the *Philanthropic Society*, *Rex* v. *Field*, *the trustees of a meeting-house*, the servants at *St. Luke's*, *the masters in chancery*, in respect of their public offices *; in all such cases the parties having the immediate use of the property merely for such purposes are not rateable, because the occupation is throughout that of the public, and of which public occupation the individuals are only the means and instruments. In the present case it is enough to say that upon the principles laid down and acted upon in the cases referred to, the commanding officer in question has such a beneficial occupation of these apartments and other conveniences as to render them rateable for the same. 3 *East's Rep.* 506.

Hospitals. Hospital lands are chargeable to the poor's rate; for no man, by appropriating his lands to an hospital, can exempt them from taxes to which they were before liable, and throw an additional burthen upon his neighbours. 2 *Salk.* 526.

But this must be understood of hospital lands let out to and occupied by persons as tenants thereof, and not of lands annexed to or held with the hospital for its immediate support; for it was said by *Ashhurst* J. in the case of the *K.* v. *Hurdis*, that lands held for the immediate support of hospitals are not rateable; and again, in the case of the *K.* v. *St. Luke's Hospital*, it was said by lord *Mansfield*, that the arguments that had been urged in that case, "that a proprietor of lands or houses cannot, by his own private voluntary act, discharge such his property from payments legally due to other persons upon and out of it," does not hold true in fact; for *this rate payable to the parish*, as well as several other payments arising from property and chargeable upon it, *does and must depend upon the will of the proprietor*. The owner of a house may, if he please, pull it quite down, and convert it into a toft. The owner of lands may, if he please, suffer them to lie barren and unoccupied. 3 *Term Rep.* 497. 2 *Burrow's Rep.* 1063. *See also the cases of* St. Bartholomew's Hospital *and the* K. *v.* Waldo, *infra.*

And with respect to the hospital itself, it has been adjudged that it is not rateable, because it is a general rule that there

* In *Holford* v. *Copeland*, *Ea.* 42 *Geo.* 3, the masters in chancery were held not to be rateable to the paving rates as occupiers of their respective apartments in Southampton Buildings, being only used for public business. 2 *Bos. & Pul.* 129.

must be some person or persons in the beneficial occupation of the property on which the rate is to attach: and neither the governors of an hospital, nor the poor therein, can be considered beneficial occupiers. Thus in the said case of the *K.* v. *St. Luke's Hospital*, *Mic.* 1 *Geo.* 3. it appeared that every part of the hospital is laid out either in wards for the lodging of lunatics, or in offices for their better sustentation and cure, or in apartments necessary for persons who are hired to attend on such lunatics, and in no other apartments whatsoever; that one of the servants, so hired, was rated to the poor, and upon appeal to the sessions, the same was confirmed; this order being removed into the court of *King's Bench*, it was moved to quash the same. And by lord *Mansfield*, the material question in this case is, 'who can be named and charged as the 'occupier?'—There are only three sorts of persons that occur to me; if they can find any others who may be properly charged *as occupiers*, such other persons will not be included in, or affected by the opinion which we now give: the only persons that I can think of are, 1st, the lessees (to whom the lease of the premises was granted merely as trustees, for the purpose of erecting and continuing thereon the hospital): 2dly, the servants attending the charity: and 3dly, the poor mad persons who are the objects of it. *First*, As to the lessees, they are so far from being occupiers of the building, that they are merely nominal, mere instruments of conveyance, and have no more interest in the thing, than the crier of the court of *Common Pleas* has, when he is named as the last vouchee in a common recovery. *Secondly*, As to the servants attending this charity, they are not in a like situation with the officers of some charitable foundations, such as 'the physician, chaplain, and others in Chelsea hospital, where there are large distinct apartments appropriated to the use of the respective officers,' wherein they and their families reside; those 'officers are not charged as servants 'of such hospitals,' or as inhabitants and occupiers of the ordinary rooms and lodgings therein, but 'as having separate 'and distinct apartments,' which are considered as their dwelling houses. The cases that have been determined by the judges relating to the window tax, are uniform in rating officers of hospitals for their distinct apartments; but in this hospital there are neither any such officers, or any such apartments as these: if this servant had been rated as the occupier, and if he had actually had a separate and distinct apartment in the hospital (which is not pretended), yet certainly he could not have been rated for any thing 'more than his own 'particular and distinct apartment.' *Thirdly*, As to the poor miserable wretches who are the unhappy objects of this charity, it would be too gross to conceive them to be the proper persons to be rated to the relief of the parish: and 'if no person can be found who is rateable, it follows by necessary

'consequence, that there can be no rate at all.' 2 *Burrow's Rep.* 1053.

So in the case of *the Governors of St. Bartholomew's Hospital*, *Tr.* 9 *Geo.* 3. The mayor and commonalty of the city of *London*, governors of *St. Bartholomew's Hospital*, pulled down several old houses belonging to the hospital, the tenants whereof had been usually assessed to the poor's rate, and on the scite of the said ancient houses erected several piles of buildings for the use of the said hospital, and inclosed an area within the same for the benefit of the patients. The question was, whether the governors of the hospital *were rateable to the poor* in respect of the buildings and area above mentioned? By lord *Mansfield*. The poor-rate must be charged upon the *occupiers*, and the corporation are not *de facto* the occupiers; the poor are occupiers, but they are not rateable. The general rule of law must be followed; that rule is, that you must find an occupier to be rated; the poor people cannot be rated at all; the servants cannot be rated as occupiers; nor can the corporation be charged as occupiers *. 4 *Burrow's Rep.* 2435.

Charitable institutions.

And upon a similar principle in the case of *the K.* v. *Peter Waldo*, *Tr.* 23 *Geo.* 3. an house built and applied to the sole purpose of maintaining and educating poor girls and qualifying them for service, was holden not liable. This case was as follows: *Waldo* pulled down a house for which he was rated to the poor eight guineas a year, and built on the same spot a new one, which was now rated; in which house ten girls were educated, maintained, and brought up on his charity, and he provided and paid a woman to superintend and instruct them. This woman and the ten children were the only inhabitants in the house, which was solely appropriated for this purpose. Lord *Mansfield*. Mr. *Waldo* makes no profit of this building, and it is sufficient that this is so in fact, and the profit is here in fact applied to public and charitable uses. *Buller*, J. Do you mean to argue, that if a man gets all he has in charity, he shall apply something more in charity? *Caldecot's Cas.* 358.

So also a person residing in a house belonging to a charitable institution is not rateable towards the poor rates: in the *K.* v. *Susannah Field*, *Ea. Ter.* 34 *Geo.* 3. where the appellant was assessed for a messuage, outhouses and premises at the rate of 30*l.* per annum; it appeared that the premises had been demised at that rent to a trustee for a charitable institution (the philanthropic society,) that by articles between this society and the

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* But for cases where a corporation may be liable, see p. 737, supra.

appellant, she in consideration of the wages therein agreed to be paid to her, "covenanted with them to become the servant of the society, in the capacity of matron or mistress over all such female children as then were or thereafter should be, under the care and protection of the society;" and that she would, during such service, receive and take under her care (and as her apprentices, if required) such number of female children, as the committee should direct, and would, to the best of her skill and ability, teach and instruct them in housewifery; "the work, labour, and earnings, as well of the appellant as of all such children," were to belong to, and become the sole property of the society; in consideration of which services, the society agreed to employ the appellant, as the servant of the society, in the above capacity; *to provide her during such service a dwelling* free from all rent, taxes, and charges whatsoever, together with good and sufficient provisions, coals, and candles, and to pay her 20*l. per annum* quarterly; but this service was determinable on either side by one month's notice, or by the society at any time, on an allowance of three months wages instead of such notice.

"The appellant had no distinct apartment for herself, but a bedchamber in the house, and her family was not allowed to reside therein." No profit was derived by any body from the labour of the children; nor was any advantage or emolument derived by the appellant from her situation, other than what was stipulated by the articles.---It was contended, that the appellant was rateable as occupier or inhabitant of the house in question, and a distinction was endeavoured to be made between the cases of the *K.* v. *St. Luke's Hospital*, and the *K.* v. *Waldo*.

By the Court, The question arising in this case is, Whether this person so acting as a servant is to be rated to the poor, as the supposed occupier of this house?

Now if it be sufficient to live in the house, it might as well be said that, where a person having a coach-house or a laundry at a small distance from the mansion-house, permits the coachman to live in the one, or a dairy-maid in the other, these servants should be considered as the occupiers of these tenements, so as to be rated for them. A person so situated is only a servant and not an occupier, either in the legal or common acceptation of the word. The legislature only meant that *beneficial occupiers* should be rated. 5 *Term Rep.* 587.

But where a profit arises, of whatever nature the institution may be, the party benefited shall, in proportion to the advantage he derives, be assessed to the poor. *Caldecot's Cas.* 153.

Agreeably to these principles it has been decided that the objects of a charitable foundation in the actual occupation of an alms-house and lands for their own benefit in the manner prescribed by the rules of the institution, are rateable in respect of Almshouses.

such occupation: this was in the case of the *K.* v. *Monday* and *others*, *Tr. Term*, 41 *Geo.* 3. which was briefly as follows: At Felsted in the county of Essex there is an almshouse endowed since the 7th year of the reign of Eliz. with twenty acres of land, a wood of four acres, and likewise the rectory of Braintree in the said county, for the only relief, dwelling, habitation and lodging of five poor old, weak, impotent or lame persons, as well men as women, and also for one grave woman to attend them: the appellants being such poor, old, weak, impotent and lame persons, were regularly appointed to the said charity, *and rated for the almshouse and lands in question to the poor's rate for Felsted for the first time on the* 16*th Dec.* 1800. At the time of the rate being made they were in the occupation of the said almshouse, and the said twenty acres of land and four acres of wood ground, and paid a labourer for making hay and cutting their wood, and disposed of both to their own use. They also kept six cows upon the same lands, weaned a calf and sold a cow every year according to the directions contained in the original deed of conveyance executed by the founder, and of the other calves and of the milk they disposed at their own pleasure. The sessions confirmed the rate; and the only question was, whether they had rated persons in possession of rateable property. By the Court, It is not the question, whether it were wise and meritorious to rate these poor objects, because it is probable that what the parish officers take from them in one shape must be returned in another: but the case being here, we can only deal with it as the law is pointed out to us. The words of the statute 43 *Eliz. c.* 2, are general; the rate for the relief of the poor is to be levied upon *occupiers of land, houses, &c.* there is no exception made of *hospital or other lands* devoted to charitable purposes, and where the legislature have intended to exempt property of this description, they have done so in express words, as in the instance of the land tax acts: it is admitted that the property itself comes within the general description of rateable property in the statute, and the only question is, *whether those persons can be said to be occupiers of it for their own benefit*? Now these persons plough and sow and reap, and have every sort of occupation, in fact, which any other person can have, and all this for their own benefit; and no case has decided, that where persons are found in the actual occupation, and having the beneficial enjoyment of property of this kind, they are not within the statute. 1 *East's Rep.* 564.

Officers of charitable institutions occupying premises assigned for their use.

If a house and premises be assigned for the habitation and use of a person appointed to the management of a charitable institution, the same are rateable to the poor; for this being part of the emoluments of the appointment, the party is to be considered as a beneficial occupier thereof. This was decided in the case of the *K.* v. *John Call*, *Tr. Ter.* 35 *Geo.* 3, which was as follows;—The defendant appealed to the *Suffolk* ses-

sions against a poor rate for *Woodbridge* parish, on several grounds, one of which was 'the omission of the Rev. *R. Dyer*, 'the occupier of a house and garden in the same parish.' THE SESSIONS confirmed the rate, subject to the opinion of the court on the following case: *Dyer*, who was omitted in the rate, was occupier of a house and garden of the yearly value of 10*l*. and upwards, which he held as master of a free school in the same parish, by appointment of the minister and inhabitants of the parish, under and by virtue of a certain deed of indenture, bearing date 2d *September* 1662, and made between the parties therein named, in which 'the said messuage, yards, 'garden, and all appurtenances thereunto belonging, situate in 'the parish, were assigned for the habitation of the master, 'and for the use of him and his family, without payment of 'any rent, income, gift, sum of money, or other allowance 'whatsoever, for or out of the same,' together with two acres and a half of pasture land in the same parish, and also three rent charges on lands in different parishes, amounting to 25*l*. *per annum*, for the teaching of ten boys, sons of the meaner sort of inhabitants of the parish of *Woodbridge*. *Dyer* became master of the school in 1774; no rates had ever been paid for the house and garden, but *Dyer* let the two acres and a half of charity land, for which the several occupiers were rated in the said rate. In support of the order of sessions, the principal arguments were, that the master of this free school stood exactly in the same situation as the servant of Mr. *Waldo*, who was put into a house, and paid for superintending and instructing ten girls there, which house was held not rateable: that as to what was said in the case of *St. Luke's Hospital*, that any officer of a public charity occupying any part of the building beneficially would be liable to be rated, that only related to public charities, and not to a parochial charity like the present, where the parish were bound by their own agreement to give the master his house free from any *onus*.—Lord *Kenyon*, Ch. J. (stopping the other side). To the authority of the cases cited I subscribe my assent. They proceeded on the ground that there was no occupier. In the *K*. v. *Waldo*, the rate was held to be bad, because there was no occupier; the poor children who were placed there for education, could not be considered as occupiers, neither could the woman servant who superintended them. That case could not be distinguished from that of *St. Luke's Hospital*, where the rate was also quashed, because there was no beneficial occupier; but 'when a case arises where a person 'is found to be the beneficial occupier of a house, he must be 'rated, though the house be appropriated to charitable pur-'poses:' as long as *Richmond Park* continued in the hands of the king it was not rateable; but when the ranger made profits of it, and beneficially occupied it, it was held to be rateable in his hands: so 'if this person had been put in merely

'to look after the pupils, and had not occupied the house, he 'would not have been rateable;' but it appears that he 'is the 'beneficial occupier of this house and garden. If every indivi'dual in the parish had agreed' not to take the advantage of the omission of this person in the rate, perhaps no one could have afterwards objected to it; *but that is not the case here*. The persons who made this rate seem to have acted honourably as far as respects themselves; but if there be any individual in the parish who objects to the omission of the defendant, the objection must prevail. This person was appointed by deed, and only those who are parties to a deed are bound by it.—*Ashhurst* J. was of the same opinion.—*Grose* J. In this case there is an occupier. That part of the land, given for the same purposes, in this case, which is let out, is rated in the hands of the several occupiers; no objection is made to that part of the rate, and I cannot distinguish between the house and garden occupied by this person, and the land so let to those occupiers; the party omitted is a beneficial occupier of the property for which he is rated; then here is that person an occupier, who could not be found in the case of *St. Luke's Hospital*.—*Lawrence* J. concurred.—Order of sessions quashed. 6 *Term Rep*. 333.

Meeting-houses and chapels.

Upon the same principle, it seems that a conventicle used not for the purposes of profit, but of preaching only, is not rateable to the poor; for in the case of *the K. v. the Inhabitants of Southwark, Hil.* 13 *Geo*. 1. it appeared that one *Read* was charged to the poor's rate, *in respect of his being the occupier* of a meeting house where he preached; and upon appeal to the sessions he was discharged: this order being brought up by *certiorari*, was confirmed by the court of *King's Bench*: 1st, Because as a preacher he is no more chargeable as an occupier than any of his audience; 'and it is not stated that he 'let out the pews, so as to make him a person that occupies 'and reaps a profit from it.' 2dly, If he were liable, yet it must be expressly alledged, and the charging him 'in respect of his 'being an occupier is too uncertain.' 2 *Strange*, 745.

So in *an anonymous case*, *Hil.* 1 *Geo*. 3, the court said that they had never known an instance of a house converted into a conventicle, *and used for no other purposes*, being rated to the poor's tax. *Poor's Sett. pl.* 159. 1 *Bott*, *Const's ed.* 97.

So in the *K.* v. *Woodward*, *Mich.* 33 *Geo*. 3, where a rate was made on the trustees of a quaker's meeting house erected and supported by the voluntary subscriptions of quakers; and it appeared that the meeting-house was solely appropriated to religious and charitable purposes; that the trustees did not receive any rent for the same; and that none of the benches in the meeting-house were let, or any pecuniary or other advantage made thereof. THE COURT, without hearing any argument, said that it was impossible to support this rate on the

trustees, who had no interest in the premises, and that though the meeting-house might hereafter be applied to any other purpose, there was no occupier of it at present, nor any profit made of it. 5 *Term Rep.* 79.

But though a building be used for the sole purposes of religion, yet if a profit be made thereof, by letting the pews or the like, it is rateable to the poor. *Robson* v. *Hyde*, *Tr.* 23 *Geo.* 3. *Caldecot's Cas.* 310.

And upon the principle that every thing which yields a certain annual profit is rateable, a keeper of a prison has as such been considered as rateable.—This was determined in *the K.* v. *Eyles*, *Hil.* 24 *Geo.* 3, it appeared that *Eyles* was duly appointed warden of the *Fleet prison;* that part thereof consists of certain rooms where the prisoners are lodged, who severally pay to the warden the weekly sum of 1*s.* 3*d.* for each of the rooms when occupied: that another part of the prison is used as a separate dwelling-house for the residence of the warden and occupied by him, his family and servants, and is of the yearly value of 40*l.* that the wardens have constantly paid to the *poor's rate* for the said prison at the rate of 300*l.* a year, until within a few years last past, when upon raising the rate to 400*l.* the warden first objected to the payment.—By lord *Mansfield*, Ch. J. In order to assess under the statute of the 43 *Eliz.* c. 2, it is not sufficient to find property only; an occupier must also be found, who may be rated in respect of that property. The question here is partly law, partly fact: it is, whether the warden is occupier of what he lets out in lodgings? He is bound to receive and keep his prisoners; but he may keep them any where within the bounds of the prison: many are sent to the common side; there he makes no profit and is not rated: others are kept out of the prison itself, in private lodgings within the rules. Is there any doubt but the occupiers of those houses are rateable? A third way he has of keeping them is in these chambers: he is not bound to keep any prisoners there: he admits none who will not pay; when they cease to pay, he turns them out. And this property has always been rated. The *King's Bench* and other prisons are rated. Little argument arises from the not rating county prisons, because they are used chiefly for the custody of felons, and in general no profit is made of them.—*Willes* J. Every thing which yields a certain annual profit is rateable. The distinction in this very prison shews it; for the common side yields no profit, but this side does. This is not rated as a dwelling house, but as property occupied, by which a profit is made.---*Ashhurst* J. I am of the same opinion. There is nothing in reason, or even technically, to distinguish this from the common case of an occupier making a profit.---*Buller* J. As to the question, whether prisoners are occupiers? it has been settled they are not; they are like lodgers; and it never was

Prisons.

imagined that a person hiring a first or second floor was rateable; the landlord is rateable for the whole house. 1 *Bott*, *Const's ed.* 160. *Caldecot's Cases*.415.

Quit rents and casual profits of manors.

The quit-rents and casual profits of a manor are not rateable to the poor---This appears from the following cases. In *Hall's case*, *Mich.* 3 *Jac.* 2. the overseer made a rate, in which he charged the *quit-rent* of several manors within the parish, which rate the justices refused to sign; because *quit-rents* ought not to be taxed. Upon application to the court of *King's Bench*, they ordered the rate to be signed, and a warrant to distrain; so that if any person thought himself aggrieved he might *replevy*, and the matter of law be brought in question. *Carthew*, 14.

But in the case of *Combes* v. *Brackly*, *Trin.* 6 *Will.* & *Mary*, *Eyre* J. said that a *quit-rent* is not taxable to the poor, for the tax ought to be laid on the occupiers. *Comberbach*, 264.

And in the case of *the K.* v. *Vandewall*, *Ea.* 33 *Geo.* 2, the question before the court being, whether the lord of a manor is assessable to the poor's rate, under 43 *Eliz. c.* 2. for the quit-rents, heriots, and casual profits of his manor? Lord *Mansfield*, Ch. J. very shortly declared the opinion of the court. "*That these quit-rents and casual profits of the manor are not* "*rateable to the poor's tax*;" which, he said, was so clear, that there was no need to enter into reasonings about it. They were never rated before in this parish; and, as far as appears to us, the rating such quit-rents and casual profits has never been at all attempted before; and there is no colour for this attempt now, after more than a century and a half since the making of the act of parliament upon which it is grounded.† 2 *Burrow's Rep.* 991.

Improved wastes.

'By 17 *Geo.* 2. *c.* 97, where there shall be any dispute in 'what parish or place waste and barren lands, and land formerly fen and marsh ground, or covered with water, heretofore improved or drained, or hereafter to be improved or 'drained, lie, and ought to be rated, the occupiers of such 'lands, houses built thereon, tenements, tythes arising there-'from, mines, and saleable underwoods therein, shall be rated 'to the poor, and all other parochial rates, within such parish 'and place which lies nearest to such lands; and if on applica-'tion to the officers to have such lands rated, any dispute 'shall arise, the justices at their next general quarter sessions 'after such application, and after notice given to the officers 'of the parishes and places adjoining to such lands, and to all

† But it is said in *Comberbach's Reports* to have been resolved, that ground rents are rateable. *Comberbach's Rep.* 62.

'persons interested therein, may hear and determine the same 'on the appeal of any person interested; and shall cause such 'lands to be allotted and equally assessed in such parish as 'they shall see just; and such determination and allotment 'shall be final and conclusive. But this shall not affect or de- 'termine the boundaries of any parish or place, other than for 'the purpose of rating such lands.' *s.* 1, 2.

Common field land.

And if it appear on the face of the rate, that there is a large tract of property producing profit which is liable to be rated, and no person is in fact rated for it, the rate ought to be quashed. This was held in *the K.* v. *Aberewen*, *Mic. Ter.* 45 *Geo.* 3. which was as follows: that the corporation of the borough of *Aberewen* was seized in fee of certain uninclosed lands, which were stocked with the cattle of the resident burgesses, or the widows of such, who alone were permitted by the burgesses to claim such right, and also by poor parishioners who were admitted to such enjoyment from charity, and such lands were altogether omitted out of the poor rate. The sessions on an appeal by one who had given notice of his objection to the parish officers and to the corporation as the party interested, having quashed this rate, the court of *King's Bench* confirmed that order. And Lord Ellennborough, C. J. said, Here is a large tract of property producing profit which is liable to be rated, and no person is in fact rated for it. This property is stated to belong to the corporation, and it may be doubtful whether the occupation shewn be their occupation, or that of individuals; under those circumstances we cannot say that the sessions have done wrong in quashing the rate. The rate therefore is quashed because no person has been rated for property which ought to have been rated. 5 *Ter. Rep.* 453.

So where a corporation were seized in fee of certain common lands, which by ancient custom were annually apportioned amongst certain of the burgesses, according to a hint annually fixed by a leet jury, the court held, that when the number of persons who stock it, is so ascertained, they become tenants in common of the land, and as such have the beneficial possession thereof, and ought to be respectively rated for the same.* *The K.* v. *Weston*, *Mic. Ter.* 45 *Geo.* 3. 5 *East's Rep.* 480. 2 *Smith's Rep.* 145.

Profits on mineral waters.

A person renting a quantity of land, together with a mineral spring thereon arising, at a gross yearly rent, is rateable to the poor in respect to the whole of such rent, though in fact the annual value of *the land*, independent of *the spring*, is only in

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* In this case the burgesses, who then occupied this common land, having been omitted to be rated, the court ordered the rate to be sent back to the session, to be amended by the insertion of the burgesses occupying the land.

proportion of *two* to *eight* of the reserved rent; for the profits arising from the spring are to be considered as part of the produce of the land. The *K.* v. *Miller*, *Tr.* 17 *Geo.* 3. In this case, it appeared that the defendant was the lessee of certain lands, containing about four acres, with buildings thereon, and a certain well of mineral water thereout arising, called the *Cheltenham Spa*, at the yearly rent of 100*l.* that the lands and buildings thereon, *independant* of the well, were of the annual value of about 20*l.*; that the rent for the mineral water is 80*l.* that the profits of this mineral water to the lessee, arise from the sale thereof, and the company resorting thereto, which is very various and uncertain; and that the lessee was rated for the premises at 5*l.* which is equal to a rate of 100*l.* *per annum* for lands in the said parish.—Lord *Mansfield.* Nothing can be plainer than the present case. This is not a rate upon the *profits of the well*, but upon *four acres of land*, let to the defendant at 100*l.* a year; and the value rises partly from the *buildings*, and partly from *the spring* that produces the mineral water; therefore the profits of the spring are *part* of the *produce* of the *land*, and as such I am clearly of opinion it ought to be rated.—*Aston* J. I am of the same opinion. The rate in this case, is upon *the whole estate*, let at 100*l.* a year. It is true, the justices in this case stated, have divided the rent, and especially distinguished between the annual value of the land and the profits of the spring; but the lessor and the lessee have made no such distinction in the lease, and the rate is upon the whole rent in gross. *Cowper's Rep.* 619.

Mines. The lessees of lead mines paying no rent, but only a certain part of the lead ore gotten thereout, are not liable in respect of such mines to be rated to the poor.—*Smelting Lead Company* v. *Richardson.* In this case the question was; "Whether the plaintiffs, who were lessees of certain lead-"mines, and who paid no rent, but only a certain part of the "lead ore gotten thereout, were liable, in respect of the said "*lead-mines*, to be rated to the relief of the poor?" and this was to be determined upon the general question, Whether *lead-mines* are rateable to the relief of the poor?—Lord *Mansfield* stated the question as above, and observed, that the words of the 43 *Eliz.* c. 2. are *coal-mines*, not mentioning any other kind of mines; and that is equal to an express exception or exclusion of all other mines; for coal mines are not lead-mines, tin-mines, copper-mines, iron-mines, or any other but coal-mines, and there were at that time other mines in this country. And it appears that lead-mines are not rated throughout *England*, and particularly in *Derbyshire*, *Somersetshire*, and *Cornwall*; and it is the same with regard to the tin-mines in *Cornwall.* I am now keeping clear of inhabitancy, which is no part of this case; for these persons are not rated as inhabitants, but only as lessees.—*Dennison* J.

concurred, relying particularly that in the 43 *Eliz. c.* 2, *coal-mines* are put as an exception, not as an *example*, and therefore the specifying them excludes all other sorts of mines.—*Wilmot* J. The legislature have not in this statute mentioned *lead-mines*, but only "*coal-mines*," and there is no reason to think they meant to include them: therefore this case is not within the words or meaning of that act. And I am clear, that this act does not extend to lead mines *. 3 *Burrow's Rep*, 1341.

But although the profits of lead mines are themselves not liable to be rated; yet if the lessee let them again to the adventurer, and, without any risque to himself, receive a stipulated proportion of the accidental profits, or value, he is liable to be rated in respect thereof. This was determined in the case of *Rowls* v. *Gell*, *Ea.* 16 *Geo.* 3.—It appeared that the plaintiff, who had been distrained for non-payment of a poor's rate, and thereupon brought this action, was lessee under the crown, of "all mines of lead, with their appurtenances, within the soke "and wapentake of *Mirksworth*, with the lot and cope within "the said soke and wapentake, under the yearly rent of 144*l.*" That the rate was "for lot and cope at 500*l.* per annum, 13*l.* "10*s.*" That the duty of *lot*, payable to the plaintiff as lessee of the crown, is the *thirteenth dish* or measure of lead ore got, *dressed*, and made *merchantable*, at all the lead mines within the said soke. That *cope* is 6*d.* for every load or nine dishes of lead ore *raised* at such mines. That the said duties are paid to and received by the plaintiff, *without any risque* or *expence* in working the mines: that in the year 1775, the duties amounted to the clear sum of 500*l.* but that they are *uncertain*, and *vary* every year.—By lord *Mansfield* (who delivered the opinion of the court). The poor's rate is not a tax on the land, but a personal charge in respect of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and not the landlord, is liable to this tax; for it arises by reason of the land in the parish; and the landlord is never assessed for his rent; because that would be a double assessment as his lessee has paid before. *Lead-mines* are not within the statute 43 *Eliz. c.* 2. They are in themselves uncertain, and may prove unsuccessful to the adventurers. Taxes therefore upon the adventurers would be hard, and they are excused. "But the person, lord, or landlord, who, in case they do prove "of value, receives a stipulated benefit from the profits or value "of them, is not excusable upon the same ground, and therefore

* And the court seemed to think, as "lead-mines and coal-mines essentially differed in respect to the expence of finding, insomuch as a man, from the uncertainty of finding them, might be ruined instead of succeeding, that that might be a sufficient reason for their being excepted by the legislature."

"is expressly charged to the land tax, as that falls upon the "landlord. He is alike liable to the poor's rates, for his visi-"ble real property in the parish;" though, where the poor's tax is a charge on the lessees, the landlord does not pay in respect of his rent. Where the adventurer or lessee of the mine pays nothing, it is no double tax in any light; because the lord pays, *not* for that, which the *lessee* or adventurer is *excused* from paying for, but the lord pays for his *own*. It is not a mere casual profit, but an annual revenue, *if any*, and very different from the casual profits of a manor, which are not annual, for there may be none for years. But *if the mine produces profit to the miner, the lord's share is certain, annual*, and an annual rent is paid for it constantly. The miner is obliged to pay certain proportions to the owner of the land. What reason then is there to exempt these proportionable revenues? It makes no difference to the adventurer; it does not prejudice or benefit him. But as such obligatory payment is in respect of the land, the land-owner ought not to receive it clearer or neater than any other part of his estate, when he is at no trouble, expence or possible risk. Therefore we are all of opinion, that the plaintiff is liable to be rated for this property. *Caldecot*, 155. *Cowper's Rep.* 951.

Toll tin.

And upon the same principle a person entitled to toll tin and farm dues is liable to be rated to the poor in respect thereof. This was settled by the case of the *K.* v. *St. Agnes*, *Mich.* 30 *Geo.* 3. In this case it appeared that the sessions had quashed a rate upon an appeal against the same, because one person was omitted to be rated therein for the *fee farms of tin* arising out of his premises; and also because another was omitted to be rated for *toll tin* raised in his manor, and to which they were entitled. "Toll tin is one fifteenth part of all the "tin gotten; and farm tin or due is one twelfth part, after the "said fifteenth part is deducted, for toll of all such tin so got-"ten within the tin bounds;" which said dues or duties are payable, free and clear of all risk and deduction whatsoever; but are uncertain and vary every year. The case of the lead mines last mentioned, was cited as deciding this question; and the court confirmed the order of sessions quashing the rate. 3 *Term Rep.* 480.

Coal-mines.

And the lessee of a coal mine, is liable to be rated though he derive no profit from the mine; this was decided in the *K.* v. *Parrot and others*, *Ea. Ter.* 34 *Geo.* 3. The defendants who were lessees of some coal mines, appealed to the sessions against a poor rate, which was there confirmed subject to the opinion of the court of King's Bench, on the following case:—The appellants held the colliery, for which they were rated, under a lease which being lost, parol evidence was given of its contents. The lessees were bound by covenant to work the colliery, and they were bound to pay to the lessees a sixth part of the money produced by the

sale of the coals, without any deduction on account of the expence of working: it was proved that upon an average of the last three years, the appellants had paid 3001*l.* 15*s.* 7*d.* to the lessors, as the sixth part of the money produced by the sale of the coals got from the colliery, during that time; that by paying this to the lessors, and also the expences of working the colliery, the lessees had lost two farthings, and half a farthing on every ton of coals got from the colliery; that the colliery had always been, and still was a losing adventure, from the time of its being first taken by the appellants; that they must have known that it would be a losing adventure at the time when they took it; and their inducement for taking it was, that when they had worked out the coal in this colliery, they would be able to get at coal of their own, which was adjoining to it; and that this was a cheaper way of getting at it, than any other which they could have adopted. It was admitted, that generally speaking, coal-mines are rateable under the *stat.* 43 *Eliz.* c. 2, which expressly mentions them; but it was contended that this rate is a tax on the possessors of property yielding a clear and visible profit; the words of the statute being, *according to their ability*, and that ability must be estimated by actual profits: and in this case it is expressly stated, that the lessees, so far from receiving any profit whatever, since they have been in the occupation of these mines, have actually been losers by the adventure; that according to the case of *Rowles* v. *Gell*, if any person were rateable here, it was the landlord in respect of his rent, and not the lessees, who it is found derived no profit whatever, after deducting the expences of the adventure.—But by lord *Kenyon*, Ch. J. It is said that this burden is to be laid where the benefit arises; but that rule cannot hold in a variety of instances that might be put. Suppose a landlord makes so hard a bargain with his tenant, that the latter derives no benefit from the farm, must not the tenant be rated to the poor? the landlord certainly is not liable. This case differs from that of *Rowles* v. *Gell*, in this respect, that was the case of lead mines, which are not rateable under the *stat.* of *Eliz.* and there the question was, Whether or not the lessee were rateable for certain annual profits which he received without any risque on his part. But here the property is rateable under the express words of the *stat.* 43 *Eliz.* c. 2.—It appears in this case, that there hath been a clear profit of 1000*l.* a year since the lease was granted; and the question is, Whether the appellants who are the occupiers of these mines, which it is admitted are rateable property, are or are not liable to be rated in respect of this property? Their objection is, that they have made an unprofitable bargain with the lessors; but we cannot examine into that, *it being sufficient to make them liable, that they are the occupiers of rateable property*.—*Buller* J. If the property be rateable, and the party rated be in the occupation of it, we cannot examine any

further, and enquire whether or not the tenant has made an unprofitable bargain.—Order of sessions confirming the rate confirmed. 5 *Term Rep*. 593.

As iron mines are not rateable to the relief of the poor; if they conjointly with coal mines*, which are rateable, are assessed to the poor's rate, without ascertaining the proportion at which each is rated so as to afford the court the means of rectifying the excess of the rate, such rate must be wholly quashed, and cannot be amended. *The K*. v. *Cunningham*, *Mic*. *Ter*. 45 *Geo*. 3. 5 *East's Rep*. 478.

Lime-works.

So also limeworks are rateable in the hands of the occupier, though there be risk and expence in the working and the profits are uncertain:—this was decided in *K*. v. *Alberbury*, *Tr Ter*. 41 *Geo*. 3. which was as follows: *John Morris* and *J. Butterton*, were joint occupiers of certain lime works in the county of Salop, under Sir Robert Leighton, and Rd. Lyster, esq. to each of whom they paid a royalty amounting upon an average to 200*l*. to Sir Robert Leighton, and 60*l*. to Rd. Lyster per annum: the lime stone when got was burned in kilns on the premises; owing to the risk and expence of workings the profits of the occupiers, are very uncertain. The only question WAS, WHETHER the persons named in the rate as the occupiers of the lime works were rateable, in respect of that species of property? BY THE COURT, the landlord who derive a certain profit upon it in the nature of rent cannot be rated, because that would be to rate the subject matter twice, but there can be no possible objection to the rate upon the occupiers; there is no pretence to call this a mine, but the land itself is convertible into a source of profit, said to be uncertain, but it is well known to be productive, the very statement shows it to be so, and as to the quantum, that must be settled by the sessions. I, *East Rep*. 534.

Slate quarries.

So also a slate quarry is rateable to the poor: this was decided in the case of *K*. v. *Woodland*, *Hil*. *Ter*. 42 *Geo*.3, upon an appeal against a poor rate made upon certain slate works: the quarter sessions being of opinion that the appellant ought not to have been rated for his slate works, amended the rate by expunging the same, subject to the opinion of the court of *King's Bench*. It appeared that the working of such quarries is attended with great expense and risk, and is considered always as a matter of uncertainty and speculation, the pure slate lying at a very great depth below the surface of the soil; that when quarries are opened in the waste, a rent is some-

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* And coal mines being rateable, *Ld. Ellenborough* observed that it made no difference, whether the coal were sold by the owner to another, who used it in an iron work, or whether he applied it himself to the like purposes.

times paid to the lord for a certain district, at other times he receives a sum of money for every tin of slate procured, and *slate mines* had never before been rated. By the court, the only ground on which it is contended that the subject matter is not rateable, is, because it is denominated *a mine*: but though this word has slipped in at the end of the case, yet it cannot alter the nature of the thing, which is nothing more than a slate work, and no mine in the proper sense of the word. Then, how is it possible to distinguish a slate work in this respect, from a lime work, which has been determined to be rateable? The express mention of coal mines in the statute has been holden to be an exception of other mines, but there cannot be a doubt but that a slate work, not being a mine, and producing profit, ought to be rated: on the other hand, if every substance which is raised from under the surface of the soil is to be considered as the produce of a mine, and therefore that the profits of it are not rateable, the exception would equally extend to gravel, sand, marl, stone, and the like; none of which were ever considered as the produce of mines. 2 *East's Rep*. 164.

But if a person has *way-leave or liberty of passage* over certain lands, paying a yearly rent for the same; this is not such a possession for which he is liable to be rated in relief of the poor.—This was determined in *the K*. v. *Joliffe*, *Mic*. 28 *Geo*. 3. The defendant was rated to the poor in respect of certain *way-leaves or liberties of passage* over certain lands in the township of *Harraton*, *Durham*, rented by him for conveying and carrying his coals worked out of his coal-mines and collieries in *Walbridge* to the river *Wear*, and there lodging the same in his staith till they are put into keels or lighters, and carried down the said river to the port of *Sunderland*, in the said county, to be there put on ship-board, at the yearly rent in the whole of 752*l*. 4*s*. being the amount of what he paid annually for such way-leaves or liberties of passage to the several owners of the lands through which the same way-leaves or liberties of passage are granted. On appeal the sessions confirmed the rate, subject to the opinion of this court.—*Ashhurst* J. It cannot be said that the defendant was an *occupier* of any thing; for all that he has is a concurrent right given him of making use of this way-leave at so much per ton for all the coals that he should carry, which is nothing more than a purchase of the liberty of carrying every ton of coals. This defendant has only a bare licence, and in respect of such licence he is not liable to be rated.—*Buller* J. This is only a bare right of passage, which is an *easement*, and not a grant of the profits of the land. And it is admitted that if it be only an *easement*, it is not the subject of a rate; if he were rated for this, it would be a double rate. In the case of *tolls*, *it is not he who pays*, *but he who receives the toll*, that is rated. Great inconveniences would result from

Way-leaves or rights of passage over land.

rating every way-leave; for if a neighbour were to give a right of passing over his field merely out of friendship, and no rent were paid for it, such liberty of passage would not be the subject of a rate, because the land can only be rated in the hands of the occupier; *but if he were to make an advantage of it, as such it may be rated in his hands.*——*Grose* J. concurring, the rate was quashed. 2 *Term Rep.* 90.

But where the party has the exclusive possession of the soil over which the waggon way passes, he may be rated to the poor's rate as the beneficial occupier thereof:—this was decided in the *K.* v. *Bell and others*, *Ea.* 38 *Geo.* 3. The defendants had been rated to the poor in the township of *Wallsend* in Northumberland for *a piece or parcel of ground called a waggon way* at the yearly rent of 200*l.* being the rent they paid to the dean and chapter of Durham for the said waggon way: upon an appeal against this rate to the sessions, the rate was confirmed subject to the opinion of the court of King's Bench.—The material facts in this case were as follows: The appellants on 20th November 1791, obtained from the dean and chapter of Durham, a lease for 21 years at the yearly rent of 200*l.* of way-leaves and liberties of passage in, through and over the lands and grounds of Matthew Waters and divers other persons, (those lands being situate in Wallsend, and being all holden by leases heretofore granted by the dean and chapter), in such direction towards the navigable river *Tyne*, as the same was marked out in a certain plan annexed to the same lease; the appellant in pursuance of the powers in the said lease had made and laid a waggon way in, through and over the grounds of *Matthew Waters* and the other persons aforesaid, and to complete it they had erected a bridge, and also in many places removed the soil and levelled the rising ground, and for the whole length of the way in the line, as the same was staked out to them, they put and placed sleepers or dormant timbers below the surface of the soil, and to sleepers or dormant timbers, they affixed rail ways or waggon ways; they also built two houses in parts of the said way which were occupied by the gate keepers or other servants of the appellants, and when the waggon way was finished, the appellants put and placed rails on both sides of the way for the whole length of it, except where it was otherwise fenced by old hedges, they also placed four gates at different places across it, which were always kept close and locked by them except at the times when their coal waggons were travelling upon the waggon way, by means of which four gates and railing all persons, as well the lessors of the dean and chapter and their undertenants as all other persons, were kept off the waggon way. The whole of the ground taken up was between 5 and 6 acres, and all the way lay in Wallsend, which maintained its own poor separately. THE QUESTION was, Whether the defendants were or were not possessed of

property rateable to the poor? By the court, on that point there can be no doubt in the argument it has been said, that because the dean and chapter could only grant a way-leave, therefore nothing more than a way-leave passed to the defendants; but we are not to inquire into the titles of the occupiers: if a disseisor obtain possession of land, he is rateable as the occupier of it; and it is impossible to read this case without seeing that the defendants have the exclusive occupation of this ground; it is stated that the defendants have inclosed the ground to the extent of 5 or 6 acres, thereby excluding "all other persons," they are therefore properly rated as the occupiers of this ground. Order of sessions confirmed. 7 *Term Rep.* 598.

Lands converted into a dock according to an act of parliament, are liable to be rated to the relief of the poor. *The K.* v. *the Dock Company of Hull*, *Ea.* 26 *Geo.* 3. This case was as follows: Two justices allowed a rate made for the relief of the poor of the parish of *Sculcoates*. Upon appeal, the sessions confirmed the rate, and stated the following case: That in pursuance of an act 19 *Geo.* 3. the commissioners therein appointed did purchase divers lands, which, as well before the purchase as afterwards, paid the land tax and all parochial assessments; that the *Dock Company* converted 3 a. 2 r. 29 p. part of the said lands, the whole of which contains 10 acres, into a dock, or bason; that in that part so converted 20 or 30 ships are frequently moored; that in the year 1783, the net proceeds for tonnage of ships in the whole dock, amounted to 3,700*l.*; that on the 7th *May* 1784, an assessment was laid on lands and tenements in the parish at 1*s.* 4*d.* in the pound: and that part of the *dock* lying in the said parish, was rated at 800*l.*, 59*l.* 6*s.* 8*d.* Against this rate it was said, that this property was rated as land, when *the act had declared that the shares of the proprietors should be considered as personal property.*—By the court. This is landed property lying within the parish, which clearly was the subject of a rate before the passing of this act of parliament. Then the question is, Whether the act exempts this property, which was rateable and rated before? But there are no words of exemption. As between the heir and executor, this is to be considered as personal property; but the legislature did not intend to alter the nature of it in any other respect.—Rate affirmed. 1 *Term Rep.* 219.

Lands converted into a dock.

But a private statute 12 *Car.* 2. having exempted certain lands given to charitable purposes 'from all public taxes, charges, and 'assessments whatsoever, civil or military;' it was holden that this extended to the poor's rate; for the court said the words of the statute speaking of all 'public taxes whatsoever,' were very clear and positive; and that the whole question merely depended on this, viz. whether in the idea of the legislature *at the time of passing this act* of parliament, the *poor's tax* was a *public* tax? and

Lands exempted from all public taxes by statute.

that it was a public tax, they said there could be no doubt, as the stat. 3 *Will. & Mar.* c. 11. had enacted that 'if any per- 'son shall be charged and pay his share towards the public taxes 'or levies, he shall be adjudged to have a settlement;' and on the construction thereof, it never was doubted, but that a payment towards the *poor's rate* was sufficient to give the party a settlement.—*The K.* v. *Scott*, *Ea.* 30 *Geo.* 3. 3 *Term Rep.* 480.

Tolls in a corporation.

On a motion to confirm a tax laid by the justices upon *the toll* of a corporation;—*Hale*, Ch. J. said, that on a reference to him he was of opinion, that the toll was chargeable, though part of it was to maintain the mayor. 3 *Kebel*, 540. *Freeman*, 419.

Profits of fairs.

And the law seems to have been admitted to be the same as to the toll of fairs, in the *K.* v. *Brograve*, *Mic.* 10 *Geo.* 3. for in that case, the defendant being rated *for the profits of a fair*, no objection was made *that the same were not rateable. Brograve* appealed to the sessions against the rate for inequality, and objected that E was rated for the profits of the fair; which, upon evidence, appeared to be let by him to another, and also that a third person, who occupied seven acres of lands as tenant to him the appellant, was not rated. The sessions ordered the assessment for the profits of the fair to be struck out, and assessed the seven acres of land. It was moved to quash the order of session, on the ground of inequality in other parts of the rate, (see p. 727 supra). But no objection was taken that the profits of the fair were not rateable; and this order of sessions was, after argument, affirmed in the court of *King's Bench.* 4 *Burrow's Rep.* 2491.

Lessees of stalls in markets and fairs.

But the lessee of a stall in a market which he frequents and uses regularly once a week, on market day, does not appear to be rateable to the poor as an occupier within the parish.

A lessee of *a stall* in a market town, who for years had been used to frequent market once a week to sell his wares, and then departed from the town, taking all his goods with him, was charged among the inhabitants with a church rate; and on being libelled in the Spiritual Court, moved the *King's Bench* for a prohibition.—*Chamberlain*, Ch. J. By the same reasons, the inhabitants of *Stourbridge* might charge those that come there to sell their wares. If a man take up his lodging for a week in a town, he shall not be charged to the repairs of the church, or such like taxes.—2 *Roll's Rep.* 238.

Tolls on navigable rivers.

The tolls of sluices on navigable rivers are liable to be rated—this was settled in the case of the *K.* v. *Cardington*, *Ea.* 17 *Geo.* 3. In this case it appeared that *Ashley Palmer*, esq. is seised in fee of the right of navigation of that part of the river *Ouze* which lies between *Erith* in the county of *Huntingdon*, and the town of *Bedford*; and *of all the tolls*, payable for the carriage of coals and other commodities upon that part of the na-

vigation. That he hath power to *erect sluices* and staunches for keeping up the water and carrying on the navigation; and that the said *tolls* are paid for passing through every sluice; and in a different rate for different sluices. That several sluices have been erected, and in particular one sluice across the said river *in the parish of Cardington*, at which the toll is three-pence *per* chaldron or load-weight. That Mr. *Palmer* does not *reside in the parish of Cardington*, nor has he any person resident at that sluice to *receive the tolls*; but that the tolls for that sluice are received at *Barford* or *Eaton*. That neither Mr. *Palmer*, nor any of the former proprietors were assessed to the poor's rates for their sluices, or for the tolls or profits, but they have been for many years assessed to the *land-tax*. That *the parish had lately assessed Mr.* Palmer *to the* poor's rates *for the said sluices*.—The Court, upon the whole, thought these tolls were rateable; and therefore affirmed the rate. *Cowper's Rep.* 581.

But the party is to be rated for the tolls where they become due. Thus, where a navigation runs from *A* to *B* through several intervening parishes, and the tolls for the whole navigation are collected in those two parishes, they may be assessed to the poor's rate in those two parishes for *the whole amount*, according to the proportion collected in each.—*The K.* v. *Aire and Calder Navigation, Mic.* 29 *Geo.* 2. 2 *Term Rep.* 660.

So where by a navigation act the proprietor was entitled to a toll of 4*s. per* ton for goods carried from *A* to *B*, or from *B* to *A*, and to a proportionable sum for any less distance; and was also enabled to appoint any place of collection; it was held that the tolls for goods carried the whole voyage from *A* to *B* are rateable in *B*, though in fact they are collected in a parish between *A* and *B*, because the tolls became due where the voyage is completed.—*The K.* v. *Page, Hil.* 32 *Geo.* 3. 4 *Term Rep.* 543.

So also it hath been determined, that the bargeway and toll-gate in the hamlet of *Hamptonwick*, purchased by the corporation of *London*, by virtue of an act of parliament for the more effectually completing the navigation of the *River Thames*, and empowering the city to levy tolls and duties towards the charges of the navigation, are rateable towards the relief of the poor in that hamlet, for such part of the tolls as become due there, notwithstanding the tolls are collected in another parish. *K.* v. *Mayor of London, Mic.* 31 *Geo.* 3. 4 *Term Rep.* 21.

And again in the *K.* v. *the Staffordshire and Worcestershire canal navigation, Mic.* 40 *Geo.* 3, where the proprietors were empowered by the act establishing this navigation to take so much per mile, per ton, for all goods carried along the canal. The Court held that they were rateable to the poor for the tolls in the different parishes where the tolls become due, that is, *where the respective voyages finished*, though for their own conveni-

ence they were authorized to collect the tolls where they pleased, and did in fact collect them in other parishes. 8 *Ter. Rep.* 340.

Tolls. But where goods are carried along two different lines of canal, *one of which is exempted by statute from being rated in respect of the tolls*, and the other not; though the voyage happen to finish on the unexempted line, where the tolls became due, and are received; yet the canal company shall not be rated for more than such proportion of the tolls as occurred in respect of the carriage along the unexempted line, and the toll arising in respect of so much per ton, per mile, is to be rated only for so many miles as the goods were carried along the unexempted line. *The K.* v. *the Leeds and Liverpool Canal Company*, 5 *East's Rep.* 325.

And the act having directed that the *said tolls, rates, and duties*, should at all times thereafter 'be exempt from the payment of any taxes, rates, assessments, or impositions whatsoever,' any law or statute to the contrary notwithstanding, 'other than such taxes, rates, and assessments, as the land which should be used for the purpose of the said navigation would have been subject to if this act had not been made,' the court held that the meaning of the clause of exemption was that the land or space occupied by the canal should be liable to be taxed as it was before, that is as the land was before: but the tolls were not rated before, for they had no existence, and therefore are exempted. *Same Case*, 5 *East's Rep.* 331.

But where, by an act of parliament, the commissioners of a navigation were authorized to take tolls to be applied to public purposes, and to no other use or purpose whatsoever; it was held that the tolls were not rateable to the poor; for it is not sufficient to point out property within a parish, in order to shew that it is rateable to the poor: 'but there must also be some person or persons in the beneficial occupation of it *;' and in this case there is property, which is the subject of a rate; but there is no occupier of it. The trustees have a bare naked trust not coupled with any interest; and therefore upon the ground that there is no occupier, the commissioners are not liable to be rated. *K.* v. *Salter's Sluice Navigation*, *Tr.* 32 *Geo.* 3. 4 *Term Rep.* 730.

Toll of light-houses. And it seems that the tolls of lighthouses are not rateable if the vessels do not come within the parish; for the tolls in that case are not due there. *The K.* v. *Rebowe*, *Mic.* 12 *Geo.* 3. The defendant was patentee of two light-houses at *Harwich*, and of certain tolls and duties payable by all ships 'passing or coming into that harbour:' the duties amounted to 1,400*l.*

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* See the case of *St. Luke's Hospital* in p. 744 supra.

*per annum*, but only part thereof was received at *Harwich*, 'the rest at many different parts of the kingdom: the collections 'were casual, as ships passed by or came into the harbour, and 'there was no other advantage arising from the light-houses.' The defendant occupied these light-houses by two men, kept in his pay to light and attend the fire and lamps from sun set to sun rising; he does not reside in the parish, 'nor was otherwise an 'occupier than' as above. The sessions being of opinion that he ought to be rated to the poor, made an order, confirming a rate which the tolls were assessed, and stated in substance the above facts. After the case had been argued, lord *Mansfield* delivered the opinion of the court as follows: We are all of opinion that the defendant ought not to be rated for the tolls: this property is not in the parish; they have not rated the house; but they have rated the tolls; the tolls are not locally situated in the parish, and therefore they are not rateable there. 1 *Bott, Const's ed.* 115. *Cowper's Rep.* 583.

Weighing engines.

But the profits of a weighing machine are liable to be rated to the relief of the poor; this was determined in the case of the *K.* v. *St. Nicholas, Gloucester, Ea.* 23 *Geo.* 3. The mayor and burgesses of *Gloucester* were possessed of a house in the parish of *St. Nicholas*; and, being so possessed, erected a machine in a street leading by the said house for the purpose of weighing waggons, carts, and carriages with coal and other things; and have since received two-pence for every ton weighed there; the steel-yard part of the machine, by which the carriages are weighed, is *in the said house*, which is called *the machine-house*: the house, independent of the profits arising from the said machine, is worth about 5*l.*: and the profits arising from the machine are about 40*l. per annum*; the machine-house was rated to the parish of *St. Nicholas*, thus: The mayor and burgesses of *Gloucester* for a machine-house, 24*l.*—1*l.* 16*s.* 0*d.* —By lord *Mansfield*. It is not in terms said, that *the machine* is annexed to the freehold; but the nature of the thing supplies the defect in the expression. The expression is "The Machine-house." They are one entire thing, and are together rated by the common known name, which comprehends both; and the principal purpose of the house is for weighing. The steel-yard is the most valuable part of the house; the house therefore, applied to this use, may be said to be built for the steel-yard, and not the steel-yard for the house. *Willes*, J. There does not seem to have been any doubt below but that the machine was, as it is described in the rate, *appurtenant to the building*; if so, *its clear profits are undoubtedly rateable*. If *a billiard-table* stands in a house, and the house should, in respect of such table, let at a higher sum, it is rateable, while the table continues there and it is so let, at the advanced rent.—*Buller* J. The conclusion of this case is strong, to see that the justices considered the machine as

part of the house; for the question they raise, the point they bring forward and refer to the court is, whether the profits are rateable? and so long as they are received, they undoubtedly are. It is like the case of the *Cheltenham Spa**. There is an extraordinary profit arising from this modification of the enjoyment. The only question therefore is, whether a man shall be rated for the property he has? If a house to-day is let for 30*l.* *per annum*, and to-morrow, if turned into a shop, would let for 50*l.* when it is turned into a shop it shall be rated at 50*l.* *Caldecot*, 262.

Carding engines.

And upon the same principle, a house with a carding machine for manufacturing cotton, described in the rate as an engine house, and both let and occupied together, though it did not appear whether the engine was fixed to the building, was considered as an entire subject, and to the extent of their value rateable to the poor.—*K.* v. *Hogg*, *Ea.* 27 *Geo.* 3. *Hogg* was rated for a building called *the engine-house*; it consisted of a bay of building about eighteen feet long; and nineteen wide, in which there was a carding-machine for manufacturing cotton. The engine was not fixed to the premises, but capable of being moved at pleasure, being only placed on the floor, and *no ways annexed or fastened to the same.* The building, independent of the machine, was worth only two guineas *per annum*, and *the building and machine together* were rated at 36*l.* The usage of the town of *Ribchester* has been not to rate personal property. It was *generally worked with water*, but frequently by the hand. The building is *not a dwelling house*, nor was it erected for the engine, but formerly was used for the purposes of turning bobbins, and as a weaver's shop.---*Ashhurst J.* It is not stated negatively, that this engine is not, in some way or other, fixed to the house while it is in a state of working. It is only stated that it is not fixed to the *floor*: but it may be fixed to the walls of the building without being fixed to the floor. And considering the nature of the thing, it must be so; for it is stated that the engine is worked by water, and the force of the water would displace it, if it were not fastened to the building. This case comes directly within the case of *St. Nicholas, Gloucester*. The house and engine *are leased as an entire subject*; for it is stated that the *premises* (which comprehend the engine and the house together) are lett to *Hogg*.---*Buller J.* In the present case, the house and engine are let together as an entirety, and upon this ground I am of opinion that the rate is good.---*Grose J.* Whether the rate itself be equal or not, is a matter for the consideration of the justices below; but the question here is, Whether by law this particular species of property, *as described in the case, is or is not rateable*? Now the property in question is an en-

* See p. 754 supra.

gine-house fitted up with this engine in it (whether fixed to it or not is not stated) and all let together; *the engine is let as part of the house;* and the rate is upon the engine-house. Now by the express words of the stat. 43 *Eliz.* c. 2. s. 1. every occcupier of lands, houses, &c. is liable to be rated. *Leasehold property has always been rated, and this comes within that description.* Suppose the owner of a tenement, which unfurnished would let only for a trifling rent, fitted it up as a malt-house, and put a malt-mill into it, and then let the whole together, the whole must be estimated together; as any other leasehold property, according to its value. 1 *Term Rep.* 721. *Caldecot*, 266.

The parson of a parish is liable to the poor's rate for his tithes, as the occupier of a tenement; for tithes are a tenement in construction of law. 1 *Strange*, 100. *Comyn's Rep.* 265. Tithes.

So a vicar is liable in respect of his tithes, by the express words of the statute 43 *Eliz.* c. 2. and the sessions have only a power to moderate, and not to discharge. 1 *Strange*, 77.

And a parson who lets his tithes to the parishioners may be taxed to the poor's rate; for the letting is but an agreement with the parishioners to retain the tithes, and the parson in this case has a modus for his tithes.--*The Q.* v. *Martlett*, 16 *Viner*, 427.

But if a parson makes a lease of the tithes to one person, who afterwards lets the same to each parishioner, then the lessee is the occupier, and ought to be taxed; for the tenant of the land in this case can never be said to be the occupier of the tithes; for he is either a person who buys the tithes, or else he is to be taken as only excused from paying any; and nobody can say, but that though the parson thinks fit to excuse a parishioner, he will still remain in point of law the occupier of the tithes: so if a man has a wood, or standing corn, and sells the same standing, the vendor is the occupier and shall be taxed—*The K.* v. *Lambeth*, 8 *Geo.* 1. 8 *Mod. Rep.* 61. *Fortescue*, 318. *Foley*, 25. 1 *Strange*, 524.

So where it was enacted by a private act, "That an allot-
"ment of common field land should be made to the rector 'in
"lieu of the tithes issuing out of the old inclosures in the
"parish;' or where the owners of such old inclosures had
"none, or not sufficient land in the common fields to make
"such allotment, that *they should pay such annual sum* to the
"rector as the commissioners should award, with power for
"the rector to distrain for the same; and to sell the distress,
"*in such manner* as landlords are by law authorised to distrain
"for rent and to sell the distress, rendering the overplus, &c."
It was held that this annual sum awarded in lieu of the tithes,

was liable to the poor's rate. For by *De Grey* Ch. J. Nothing can be clearer than the law upon this case. 'This is a 'sum of money payable in lieu of the tithes of the old in'closures,' on account of the inability of the owners to furnish land sufficient to make an allotment. 'The tithes were before 'subject to the poor's rate, and so would have been the allot'ments if made.' Why then, in point of justice, should this sum of money stand excused? It is said to be *a rent;* but the act has industriously avoided calling it by that name; it is a mere *composition of tithes*; and the superadding a power of distress does not turn it into a *rent*, but rather proves the contrary: for if it were a rent, the distress would be incident to it, without any special provision in the act. The other judges concurred.---*Lowndes* v. *Herne*, *Hil.* 19 *Geo.* 3. 2 *Black. Rep.* 1252.

And the proprietors of the tithes of fish titheable by custom, are liable to be rated to the poor.---*K.* v. *Carlyon*, *Clark*, *and another*, *Tr.* 29 *Geo.* 3. Upon an appeal to the sessions against a poor's rate, they confirmed the same, subject to the opinion of the court on a case, stating that the appellants were the proprietors of the tithe sheaf of the parish, and also of one tenth of all *fish taken or caught, and brought on shore within the parish*, and that they and their tenants were rated in respect thereof. The only question made was, concerning the rateability of fish; and this property having been always rated in the parish, and being a property *yielding a certain annual profit*, the sessions were of opinion that it was rateable, and confirmed the rate.---Lord *Kenyon*, Ch. J. This question is decided by the express terms of the act of parliament, which, after mentioning parsons and vicars in the number of the persons who are to contribute to the relief of the poor, enumerates (among other things) *tithes impropriate* and *propriations of tithes*, in respect of which the rate is to be made. And indeed the spirit of the law coincides with the words of this statute. For the legislature intended, that when rates are made for the relief of the poor, every person should contribute according to the benefit which he receives within the parish. 'Here the parties receive a certain benefit arising from the 'tithe of fish, and run no risk whatever.' Then it is said, that only property which is *visible* should be rated: but I think that is carrying the rule of exemption too far; for oblations and other offerings, which constitute the rectorial and vicarial dues, are rateable.---*Buller* J. Supposing the fishermen are not rateable for the fish caught, yet the persons entitled to the tithe of fish run no risk, and their profit is certain: therefore for that certain profit I think they are liable to contribute to the poor rates.---Order of sessions confirmed. 3 *Term Rep.* 385.

In respect to the rating of personal property, many ques-

tions have arisen, but from the importance and very extensive consequences of such a judgment, the court seem always to have been adverse from coming to any decision upon the general question, 'whether every species of personal property is liable to be rated?' And most of the cases on this subject appear to have been decided upon their own peculiar circumstances. 5 *Burrow's Rep.* 2634. *Cowper*, 618. *Caldecot*, 149, 150. 266. 1 *Term Rep.* 721.

For the court will not give an opinion on every general question which the sessions may think fit to bring before it, as whether all stock in trade ought to be rated without any distinction or enumeration of particulars, for this would sow the seeds of dissension all over the kingdom---By lord *Mansfield in the K.* v. *Witney, Ea.* 10 *Geo.* 3. 1 *Bott, Const's ed.* 114.

But it was said by Mr. Justice *Aston* in the *K.* v. *Andover, Hil.* 17 *Geo.* 3, that if the thing were practicable, if *the fact were fairly stated* upon an appeal, the general question of the liability of personal property might then be discussed. And he said there are a great many cases which say that *the local visible property may be rated*: but the question is, How it must be done? Suppose it were done by the overseers, if notice is given to the several persons rated, and they think themselves over-rated, they have an appeal to the sessions. So if a house has been usually rated for the house and stock in trade all together, the rate is so specified; and if the person has an objection because he is mounted too high, on an appeal, all that is a matter to be laid before the justices at sessions, *who act as jurymen with respect to the fact, and judges as to the decision.* Then *the immediate point* specified in the appeal is produced, and notwithstanding the usage*, if upon the general question, it should turn out to be the law that personal property is rateable, if that is the law, it must be then rated, though it never was so before. *Cowper's Rep* 565.

And in the case of *the K.* v. *Hogg*, above mentioned†, *Buller* J. was of opinion that it would have been better to have given a direct opinion at once upon the construction of the 43 *Eliz. c.* 3. than to state particular cases, in order to see whether they formed exceptions to the act, without giving an opinion on the general construction of it. And he thought, that as a general question, *personal property is rateable;* and the question ought always to be, Whether the particular case be an exception to the general rule? He was aware of the great difficulty of rating personal property in all cases; but if it could be done, the court must pronounce the law; and he thought that by law it was rateable. 1 *Term Rep.* 731.

* See *the Knig* v. *Hill*, infra.

† See p. 766, supra.

Also in *the K.* v. *the Justices of Canterbury*, *Mic.* 9 *Geo.* 3. ---Lord *Mansfield* said, To be sure, personal property is within the act of 43 *Eliz. c.* 2. and yet it is almost impossible to rate it, for it would be compelling persons to discover their debts. 1 *Bott, Const's ed.* 112.

For the personal property and stock in trade to be liable, ought to be visible, liquidated, and ascertained; not casual, fluctuating and uncertain. But the court in another case v. *the same justices*, *Hil.* 9 *Geo.* 3. 1 *Bott, Const's ed.* 112, 113. 4 *Burrow's Rep.* 2291.

Also in the *K.* v. *White*, *Tr.* 32 *Geo.* 3. Lord *Kenyon* said that the expression of *Yates* J. in the last case was, "If " personal property be rateable, it is not to be done at random, " and to leave the party rated to get off as he can; but the " officer making the rate must be able to support what he has " done by evidence; and no personal property can be rated " but the clear liquidated surplus, after paying all his debts." 4 *Term Rep.* 77.

Also in the K. v. *The Churchwardens of Andover*, *Hil.* 17 *Geo.* 3, lord *Mansfield* said upon the general point; That it is a very different question, whether personal estate is to be rated to the utmost *extent*, or not to be rated at all in any shape, or under any circumstances. It would make the poor laws very oppressive, if a man is to be taxed to the extent of his whole personal estate and income. In that case, every man who has money in the funds would be liable; lawyers for their fees; soldiers for their pay, &c. But where men are occupiers of houses and have stock in trade, Whether such stock in trade may be taken into consideration? is a very different question. *Cowper's Rep.* 550.

Leaving this *general* and very important point, which does not appear to have been as yet solemnly determined, where it now stands; it only remains to state *the particular cases* in which the question occurred.

Farming stock. *The Q.* v. *Barking*, *Hil.* 5 *Ann.* Upon a reference to the court of *King's Bench* upon several orders made relating to the poor's rate, the question was, Whether a farmer for his stock shall not be chargeable and taxable to the poor's rate as well as a tradesman for his stock in trade?—*Powell*, *Powys*, and *Gould*, Justices, were of opinion, contrary to the opinion of *Holt*, Ch. J. that a farmer for his stock is not taxable; and an order was accordingly made, that *a farmer* shall not be charged and taxed to the poor's rate for his stock; and *that a tradesman is to be charged and taxable for his stock in trade.* But in the abridgment of this case in *Viner*, it is said, *a farmer* shall be taxed for his riches and stock, in case the stock is more than is necessary for the carrying on his farming, and paying his rent, for then it is like a stock in trade; but for stock necessary to his farming he shall not be taxed. So for extraordi-

nary stock he shall not be charged, if it be not more than is necessary; for the act says, "every inhabitant, and every "occupier of land, &c." So that there may be an inhabitant that is not an occupier of land, and he must be charged in respect of his personal estate and ability, and so it is usual to tax clothiers. 16 *Viner*, 426.

*N. B.* The order above-mentioned was for rating the farmers for the corn and hay which was in their barns and stables. 2 *Ld. Raym.* 1280.

But in the above case of *the K.* v. *Witney*, *Ea.* 10 *Geo.* 3, where this case was cited and relied on, as to the rateability of stock in trade in general, lord *Mansfield* said it was a strange case, and observed that the opinion of the three judges was only said to be, that a farmer for his stock was not taxable; but that it doth not appear that a question was directly put to them, whether a tradesman was taxable to the poor for his stock in trade*? The court however gave no opinion upon the principal point. *The K.* v. *Witney* was thus. Upon an appeal against a poor rate, the cause of appeal was, For that there were within the parish many manufacturers of blankets and other traders, who employ there many servants and apprentices, and such manufacturers and traders 'were not assessed 'in the said rate for their stock in trade; and for that reason 'only the said rate was quashed,' (the court of sessions being of opinion that *stock in trade ought in all cases* to be rated) subject however to the opinion of the court of *King's Bench* on the facts.—Lord *Mansfield*, Ch. J. This matter does not come before the court in a proper manner. It ought to come on by a complaint of some one who is rated for somewhat which he thinks not rateable. The court will not give an opinion on every general question which the sessions may think fit to bring before it. If this court should determine so vague and general a question, as *whether stock in trade be rateable*, without any distinctions or enumeration of particulars, it would sow the seeds of dissension all over the kingdom.—*Aston* J. The justices being of opinion that all stock in trade ought to be rated, should have put the rate on each man whom they thought rateable, and should have said, for such stock (particularizing it) so much. If such person thought himself aggrieved, he might have removed the order by *certiorari*.—*Willes* J. I think this state of the case too general. One thing the justices have said in it which cannot be true, *viz.* that stock in trade ought in all cases to be rated; in some cases, Stock in trade.

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* Also in the case of the *K.* v. *Ringwood*, *Tr.* 15 *Geo.* 3.—Lord *Mansfield* again observed, that the court had no case before them as to that point, and that therefore the judgment upon that question was extrajudicial. *Cowper's Rep.* 326.

it may be rateable, in others not.—*Blackstone*, J. I think this order bad in matter, form, and circumstances. It is nowhere said, unless it can be taken by implication, that there is any stock in trade in *Witney*. The court might infer, that a *tradesman* must have stock, but not a *manufacturer*.—Order quashed. 1 *Bott*, *Const's ed.* 114.

So in the case of *the K.* v. *Ringwood*, *Tr.* 15 *Geo.* 3, it appeared that three persons were possessed, as copartners, of *stock in the trade* and business of *common brewers* and maltsters, to the value of 4000*l.*; for no part of which they were assessed; and the sessions upon appeal had therefore quashed the rate, and ordered a *new one* to be made.---The court of *King's Bench* quashed this order of sessions, because the justices had quashed the whole rate instead of *amending* it.

By lord *Mansfield*. The court are not obliged to give an opinion upon every general question which the sessions may think fit to bring before it. But as to this particular case, I have no doubt what is to be done with it. *The justices at sessions should have* amended *the rate if they thought this property rateable**. *Cowper's Rep.* 326.

But in the *K.* v. *the Churchwardens of Andover*, *Hil.* 17 *Geo.* 3. the sessions of *Andover* on appeal, having ordered a rate for the relief of the poor to be amended by adding certain persons to it; on application to the court of *King's Bench* this order was quashed, *because the sessions had omitted to state that such persons had notice, or appeared and were heard* on the appeal. *Cowper's Rep.* 550.

But where it hath been the usage in a parish to rate persons to the poor for their stock in trade within the parish, such persons are liable under 43 *Eliz.* c. 2. to be rated to the poor in respect thereof. *The K.* v. *Hill*, *Tr.* 17 *Geo.* 3. *Cowper's Rep.* 613.

So in *the K.* v. *Dodd*, *Hil.* 22 *Geo.* 3, where upon an appeal against a poor's rate, the sessions confirmed the same, and stated that it had been usual and customary from 43 *Eliz.* 'and 'ever since the existence of rates for the relief of the poor, to 'rate and assess the inhabitants, for and in respect of their per-

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* And he added, that on attempting to do so they would have discovered the wisdom of conforming to the practice, which they expressly state in the case, of not rating it. If they had tried to have amended it, how would they have rated this stock? Are the hops and the malt and the boiler to be rated at so much for each? or, is the trader to be rated for the gross sum which his whole stock would sell for? If the justices had considered, they would have found out the sense of not rating it at all; especially when it appears that mankind has, as it were, with one universal consent, refrained from rating it; the difficulties attending it are too great, and so the justices would have found them.

'sonal property or stock in trade;' it was insisted in support of the rate, that an uninterrupted usage and custom of rating this species of property from the very date of the statute down to the present time being expressly stated, this question had lately undergone a solemn decision, and was no longer open to argument. The other side admitting that it was not possible to distinguish this from the case of the *K.* v. *Hill*---the order of sessions confirming the rate was affirmed. *Caldecot's Cas.* 147.

Also in the *K.* v. *White and others, Tr.* 32 *Geo.* 3, it appeared that a poor's rate for the parish of *St. James* in the town and county of *Poole*, was 1*d.* in the pound on all lands, and 3*d.* for every 100*l.* of personalty, and that 'it was usual 'in that parish to rate the inhabitants for their personal pro- 'perty.' According to this proportion, one person was rated for his personal property, *consisting of stock in trade as a shopkeeper*, in the sum of 300*l.* and it was admitted to be rateable. 4 *Term Rep.* 771.

And, as stock in trade, when its value can be ascertained, is rateable to the poor; if on an appeal against a rate, because certain persons are not rated for their stock in trade, the sessions make an order, subject to the opinion of the Court of *King's Bench*, they must expressly state, whether the property alleged to be in the possession of the parties unrated belong to them or not; and if it does whether it produces a profit or not; or whether it is liable or not to incumbrances of equal value. If the sessions omit this, the court cannot give any opinion. This appears from the case of the *K.* v. *the Inhabitants of* Dursley, *Mic. Ter.* 35 *Geo.* 3, which was as follows:—The appellants appealed against a rate made for the relief of the poor, upon the ground that certain persons, naming them, were not rated for their goods, stock in trade, and personal effects. The Sessions being of opinion that stock in trade and personal property ought to have been charged, quashed the rate, subject to the opinion of the court on the case; wherein, after stating that it had not been usual to rate personal property in the parish, except from the year 1769 to the year 1775, it concluded thus: 'Messrs. *Thomas* '*Tippets* and *Co.* Messrs. *John* and *Edward Wallington*, and 'Mr. *John Phelps*, were, at the time when the rate was made, 'clothiers, *possessed of visible stock* in trade in the parish, 'to the amount of 100*l.* each. *Thomas Moore* is a grocer, 'and Messrs. *Troughton* and *Neale* mercers, *possessed of visi-* '*ble stock in trade* to the amount of 50*l.* each. "Such re- "spective stocks were intended to produce a profit, and from it "the parties did, or ought to receive a profit. Such trades "were sometimes productive and sometimes not. It was not "proved that these parties made any profit of their stock in "trade, nor that it was exclusive of their debts; nor that it "left a clear residue; nor that it belonged to them, but from

"its being in their possession." —By lord *Kenyon*, Ch. J. (after hearing counsel in support of the order of sessions). There is no doubt but that personal property is rateable; but the difficulty in this case is to know for what these persons should have been rated. They appeared indeed in the possession of stock in trade, some to the amount of 100*l.* others to that of 50*l.*: but the justices at the sessions have not stated whether or not this property belonged to the several persons whom the appellant wished to include in the rate; or if it did, whether or not it produced profit; or whether or not it was not liable to incumbrances equal to the value of the property itself; 'the 'bare possession of personal property is to be sure evidence 'from which the justices may draw the conclusion that the possessor should be rated; *but* here the justices, after stating 'the possession, have raised a doubt respecting other facts 'which they should have enquired into, and determined upon.' They have raised a mist which we cannot dispel. The facts are not sufficiently disclosed to enable us to draw the conclusion that these persons ought to be rated.—*Grose* J. I do not see any point upon which the justices at the sessions desired our opinion in point of law. The facts are not sufficiently stated. By the Court, order of sessions quashed. 6 *Term Rep.* 53.

And as stock in trade is rateable if its value can be ascertained, and it be productive of profit, the circumstance of its having been rated one year, and paid for by the parties assessed without appeal, is *prima facie* evidence that it is profitable; and if any of the persons who have been so assessed, wish to discharge themselves from the payment of a future assessment, they must, upon an appeal to the sessions, expressly shew by evidence, that they ought not to be rated, although thereby they may be put to the severe necessity of disclosing their circumstances. This was decided in the case of the *K.* v. *Inhabitants of Darlington, Mich. Term,* 36 *Geo.* 3, which was as follows: Certain persons appealed to the sessions against a poor rate made for *Darlington*, because seven persons were not rated for their stock in trade: the sessions quashed the rate, and stated a case for the opinion of the court thus: "It did not "appear whether stock in trade had or had not been rated in "*Darlington* prior to 1745: from 1746 to 1752 it had; and "again from 1788 to 1794 it had been rated; in the rate for "the year 1794, seven persons were rated for their stock in "trade as yielding certain profits, (stating them) against "which rate those persons did not appeal; this, the appellants "contended, was an admission, that, at that time, those seven "persons possessed stock in trade producing the profits there "stated. This rate was paid by some of those seven persons, "but not by others; to enforce payment from whom no steps "had been taken: the appellants then proved, that two of

"those seven persons, in January 1795, when another rate "was made, kept shops in *Darlington*, and each possessed a "visible stock in trade there, and that they appeared to carry "on business there to the same extent as in 1794" THE SESSIONS concluded their statement of the fact thus: "the circumstances of the ability of those two persons, (naming "them) and the other five, or that they respectively made pro- "fit of their stock in trade, or that it was exclusive of their "debts, or that it was a clear residue after debts paid, did not "appear *otherwise than as hereinbefore is stated.*" By Lord *Kenyon*, Ch. J. Here the justices have drawn the conclusion that the stock was productive, they have indeed, added to the case that it did not appear to them that the stock was productive, *otherwise than as thereinbefore is stated*: but then it becomes material to see what is before stated; 'it is stated that these persons had large visible stock 'in trade, that in the preceding year they were rated for that 'stock, and that they submitted to the rate, for "whether paid "or not at the time, is immaterial, no appeal having been made "against the rate;" then their circumstances not being altered, the question is, whether all this was not *prima facie* evidence for the justices to proceed upon, and whether, as this evidence was not opposed by evidence on the other side, it was not sufficient to enable them to draw the conclusion which they have drawn. Undoubtedly it was strong *prima facie* evidence against the persons rated; and they should have discharged themselves in such a case by evidence shewing that they ought not to have been rated. I feel indeed the severity of compelling persons in trade to make a disclosure of their circumstances; but this is not a singular case: persons appointed sheriffs in some corporations being sometimes obliged to disclose their situation in order to excuse themselves serving the office. In this case some evidence was before the justices in support of the rate; it was competent to them to decide on the weight of it: they have decided; and we cannot now say, that the conclusion they drew was certainly wrong. Order of sessions confirmed. 6 *Term Rep.* 468.

In the same case *White* was also rated in the sum of 13,500*l.* for his personal property, which consisted of certain *ships or vessels* employed in the *Newfoundland* trade from the town of *Poole* in the said parish; and of *monies charged* on *lands lying out of the parish*.---By lord *Kenyon*, Ch. J. In the case in *Bulstrode* it was said, that the rate should be on persons in respect of *visible property*, *locally situated within the parish*. Then applying that rule to this case, I think that the ships are rateable; this parish is their home, and must be so considered for their register. But with regard to the money lent on real securities, I think that it cannot be rated; for it is stated, that the money was lent by persons out of this parish on landed securities elsewhere. This therefore is not persona Ships and mortgages.

property in the parish; the other judges concurred. 4 *Term Rep.* 771.

Household furniture.

Another person was by the same rate assessed in respect of his household furniture; but the court held that the same was not rateable to the poor; for it is an expence to the owner, and produces nothing; it is the mean by which he occupies, not by which he gains his livelihood; and a man might as well be rated for the food he eats, or the clothes he wears. 4 *Term Rep.* 771.

Money.

There was also in the same rate an assessment upon a person in respect of 1000*l.* principal money in hand, but it was determined that the owner thereof was not rateable. For by *Buller* J. (to which the other judges assented) the reason, that household furniture is not rateable, namely, because it does not produce any profit, must also govern this: it is stated that the owner has it in hard money, and therefore we must take it, upon this state of the case, that it does not produce profit. Besides, money cannot be rateable within this act of parliament. For the legislature could not intend that enquiry should be made as to every guinea which a man has in his pocket. If the rate be confined to visible property yielding profit to the parish, there will be no difficulty in adhering to that rule; but it will be dangerous in the extreme to extend it farther, and to look into every man's bureau to see what money he has there. 4 *Term Rep.* 771.

Money in the funds.

Stock or money in the public funds cannot be rated to the poor rates under the statute of *Eliz.* nor under any private act, which authorizes the rating of persons in respect of money *out at interest*—This was decided in the *K.* v. *St.John Maddermarket*, *Hil. Ter.* 45 *Geo.* 3. which was briefly as follows: An appeal was made against an assessment in respect of 1000*l.* stock or personal property charged upon the appellant, under a private act of parliament, made in the 16th year of the reign of *Queen Ann*, for the maintenance of the poor of Norwich, whereby the churchwardens and overseers of the poor are authorized to assess 'the inhabitants and every parson and vicar, and all 'occupiers of lands, houses, tenements, tithes, and all persons having and using stocks and personal estates, in the parish of St. 'John Maddermarket, *or having money out at interest*, in equal 'proportions.' It appeared that it had been the custom to rate the parishioners for *money out at interest*, as well without as within the said city, and it also appeared that the appellant had not any stock or personal estate in the parish, nor any *money out at interest* in real or personal security, *except only a sum of money then vested in the* 5*l.per cent.* consolidated bank annuities: the sessions allowed the appeal, and on a motion to quash this order of sessions, the same was affirmed. FOR BY THE COURT, This is not a local and visible property, within the parish; and nothing is rateable to the poor under 43 *Eliz.* c. 2.

which is not literally rateable, and this private statute of Ann, being made in *pari materia*, ought to receive a similar construction, the sessions have therefore done right in quashing the rate*. 6 *East Rep*. 182. 2 *Smith's Rep*. 270.

The *salaries* of public officers or other persons are not rateable to the relief of the poor—for in the *K*. v. *Shalfleet*, *Tr*. 8 *Geo*. 3. the question was, whether one *Sherrington*, who was an officer of the *Salt-office*, was liable to be rated in respect of his salary? After the case had been argued, lord *Mansfield* delivered the opinion of the court:—This species of property is not mentioned in the act; nor has it any analogy to those sorts of property that are mentioned therein: the whole scope of the argument for the taxation is foreign to the question, namely, that a man may be rated in his parish for his personal estate: now a man's personal estate is only what he is worth after payment of all his debts; which cannot easily appear so as to be rated; but that is not the question here, he is here rated for his specific property, as lying in the parish, which he ought not to have been, and we are all of opinion, that this is not such a species of property, as can be rated to the relief of the poor as personal estate within the parish. 4 *Burrow's Rep*. 2011, 1 *Bott*, *Const's ed*. 109. Salaries.

So also in the above case of the *K*. v. *White*, it was said that the question as to the rateability of salaries, had been long at rest; and the court therefore determined that a collector of customs for his salary, a captain in the navy, or a merchant's clerk, or the master of a merchant vessel, for their pay, were not rateable to the relief of the poor. 4 *Term Rep*. 771.

An attorney is not liable to be assessed in the poor rates, in respect of the profits of his profession.—This was decided in the case of the *K*. v. *Startifant*, M. 37 *Geo*. 3. which was as follows: the defendant appealed to the quarter sessions, at *Preston* in *Lancashire*, against a poor rate in which he was assessed 2s. 3d. in respect of the profits and fees of his profession as an attorney: the sessions confirmed the rate, and stated the following case for the opinion of the court: the appellant was an attorney at law, and an inhabitant, practising within the borough of *Preston*. There were many other attornies also inhabiting and practising in the borough. The usage of rating attornies, for the profits and fees of their profession, first commenced by an assessment made for the relief of the poor in the

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*And lord Ellenborough observed that the words *having money out at interest* must mean not indeed the possession of the money, because it is stated to be *out*, but having a right at some time or other at a period longer or shorter to reclaim the money, which is so outstanding; which is by no means a description of money in the public funds, with respect to which, the parties have not the money out at interest, but in lieu thereof have an annuity.

year 1732, and had ever since prevailed, such attornies being rated according to the supposed profits and fees of their profession or business, some at 12s. and others at 9s. and others at less sums in each rate or assessment. Objections had frequently been made by the attornies, so rated, to the legality thereof, and in some few instances, payment had, from time to time, been resisted, but no appeal from such rates or assessments had before been brought to trial. The sum of 2s. 3d. was no more than the appellant's just proportion or share towards the rate, if, in respect of such his profits and fees of his profession, he was legally bound to contribute any thing towards the relief of the poor of the borough.—The counsel who was to have argued in support of the order of sessions, admitted that the rate could not be supported. And *The Court* said there was no doubt in the case, and they quashed the order of sessions. 7 *Ter. Rep.* 60.

### *IV. Rating persons to the maintenance of their relations.*

For persons to be relieved by their *parents* or *children*.

By 43 *Eliz.* c. 2, 'the father and grandfather, and the mother and grandmother, and the children* of every poor, old, 'blind, lame, and impotent person, or other poor person not able 'to work, being of a sufficient ability, shall, at their own charges, 'relieve and maintain every such poor person in that manner, 'and according to that rate, as by the justices of that county 'where such sufficient persons dwell, or at their general quarter sessions, shall be assessed, upon pain to forfeit *twenty 'shillings* for every month which they shall fail therein. s. 7.

'And such forfeiture shall go to the use of the poor of the 'same parish, and be levied by the churchwardens and overseers, by warrant from two justices (1 *Qu.*), or mayor, or

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*And in the case of *Waltham* v. *Sparkes*, *Holt*, Ch. J. said that the word *children* in the stat. 43 *Eliz.* c. 2. s. 7. extends to *grandchildren* although not expressly mentioned, because there is the same natural affection†. *Skinner*, 566. *Cas. of Sett.* 210.

† *Note*; this is only an *obiter* saying; and it does not appear that any question has ever been raised upon the point, so as to bring the same before the court for judicial investigation; nevertheless it rather seems that what *Holt* is reported to have said in that case, is a sound construction on the meaning of the statute, for to have inserted the word *grandchildren* would have been superfluous; the intent of the statute evidently being, "that the father and grandfather, and the mother and grandmother, and the children shall mutually relieve each other"—to have added *grandchildren* would have therefore been redundant, as that relationship must be comprehended under these general words.

'alderman, or head officer within their limits, by distress and 'sale; or in defect thereof, such justices, or the said al- 'dermen and head officers within their limits, may commit 'the offender to the common gaol till the forfeiture be paid.' c. 11.

It seems that the courts formerly inclined to the opinion that the statute extended to relations *in law, as well as natural* relations; and *Blackstone* has adopted this as the law in his Commentaries*; but it appears now to be clearly settled otherwise, and that the statute only extends to *natural relations*. To what relations the statute extends.

For it has been solemnly determined, that *a son-in-law is not obliged to maintain his mother-in-law*—this was in the *K.*

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* By the interpretation, *he observes,* which the courts of law have made on the statutes, if a mother or a grandmother marries again, and was before such second marriage of sufficient ability to keep the child, the husband shall be charged to maintain it; for this being a debt of hers when single, shall like others, extend to charge the husband; but at her death, the relation being dissolved, the husband is under no farther obligation†. 1 *Black. Com.* 448, 449.

† He seems to have founded this opinion upon the doctrine held out in some of the old cases, and which, from the determination of the court in the case of *the K.* v. *Munday*, above-mentioned, appears to be now entirely exploded; it may not however be amiss to insert in this place what was said by *Croke*, J. in one of those cases, where the question was, whether a man who was *the grandfather-in-law by having married the grandmother*, was bound to maintain the grandchild of his wife?—Upon that question he is reported in 2 *Bulstrode*, 347, to have said, "It is "clear, that the *grandmother* or the *grandfather having means*, shall "be bound to keep the child; but if they have no means, then they "shall not; also, if the grandmother *hath no means* and she afterwards "marries with one that hath means, he shall not here be charged with "keeping of the child. But if the husband hath sufficient means "with the grandmother in marriage, then he shall be charged with the "keeping of the child during the life of the grandmother, his wife; "but if the wife dies, the husband shall not be charged after her death: "also, if land descend and come to such a grandmother after her mar- "riage, and the husband hath this in her right, the husband shall be "bound to keep the child. In the present case, the grandmother, at "the time of the marriage, had nothing, and therefore cannot be "charged with the keeping of the child: also, if the husband after mar- "riage comes to be of ability, he shall not be charged. The reason "why the husband shall be charged to keep the child when he mar- "ries the grandmother, being of ability, is, because by the marriage "he hath acquired and got the means which the grandmother had,

v. *Munday*, *Tr.* 5 *Geo.* 1. The order recited, that *Munday* had a good fortune with his wife (*who was living*, 4 *Term Rep.* 118.), and that his mother-in-law was poor, it therefore ordered him to provide for her.—By *Pratt* Ch. J. The cases which have hitherto been before the court, were either where the judges were divided, or where the matter did not come directly in question, or was only a case at a judge's chamber. It never came judicially before the whole court till now. And as it is *a new case*, on consideration we are all of opinion, that the *son-in-law* is not bound either within the words or intent of the statute, which provides only for *natural parents.* By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature does not reach to this case. Order quashed. 1 *Strange*, 190. *Fortes.* 308.—*The doctrine in this case has been recognized and admitted as law in several subsequent cases, and particularly by lord* Kenyon *in the case of* Tubb v. Harrison, Mic. 31 Geo. 3, where the court were clearly of opinion that a husband is not liable to pay the expences of maintaining the wife's child by a former husband. See 4 *Term Rep.* 118.

Upon the same principle it hath been adjudged, that *a husband is not obliged to maintain his wife's children ;* for in *the K.* v. *Benoire*, *Mic.* 13 *Geo.* 1, it was moved to quash an order of sessions made on the defendant for the maintenance of *his daughter-in-law* ; and the exception was, that a daughter-in-law is not such a relation as is within the statute, as there is no relation in blood between them, nor any obligation upon the father-in-law by nature to relieve her ; and to this purpose, *the K.* v. *Munday* was cited, which was said to be stronger than the present case.—In *Hil.* Term following the order was quashed, no cause being shewn. 1 *Bott*, *Const's ed.* 324.

And in the case of *Woodford and Lilburn*, the point was expressly determined—it was as follows: *The father-in-law of a pauper was charged with her maintenance ;* and the justices gave this reason, *because he had a great fortune with his wife, the pauper's mother.* In support of the order, it was among other things contended, that the charge on the wife was a debt created by parliament, and that in all cases the husband is sub-

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" out of which means the child is to be maintained ; and so he must " take his wife with this charge and burthen : but there is no reason in " law to charge the husband in this principal case, because he had no " means at all with her in marriage ; and where the grandmother is un- " able and marries with a man of ability, he is not to be charged." 2 *Bulstrode*, 347.

ject to the wife's debts*.—But by THE COURT. It was determined upon this act in the *K.* v. *Munday*, that the words "father and mother" meant such as were so in blood, and that even these relations are not chargeable in all instances, but that they must be such as are of *sufficient ability*. But this is a case where the mother is not of sufficient ability, being married at the time of the demand, and this demand is not a charge upon the *estate*, but upon *the person* in respect of the estate; and if they are not of ability at the time *when the demand arises*, they are not chargeable by this act†. The present case is exactly the same with that of the *K.* v. *Munday*; so that we are of opinion, that the father-in-law is not liable in respect of any estate which he had with his wife. 1 *Bott, Const's ed.* 325.

So also it hath been determined that *a father is not bound to maintain his son's wife*—This was determined in *the K.* v. *Kempson, Mic.* 7 *Geo.* 2, where the sessions had ordered the father-in-law to pay one shilling weekly and every week unto his daughter-in-law towards her relief and maintenance.—By lord *Hardwicke*, Ch. J. I am of opinion, that *a father cannot be ordered to maintain his son's wife*, for the relation is not such as makes him liable to the charge; had the order been made upon the husband to relieve his wife, it would have been binding on him, but cannot affect the husband's father. In the *K.* v. *Munday*, the court were clearly of opinion, that a son is not liable to maintain his wife's mother; though in that case it was argued in favour of the order, that by the law of nature a father ought to maintain his son's wife; but there being no law in force to second the law of nature, the 43 *Eliz.* was made to carry it into execution: yet the court then over-ruled it, and I am very well satisfied with the authority of that case. I therefore think this order must be quashed, and that the statute only extends to natural relations.—*Page* and *Probyn*, justices, agreed.—*Lee*, J. In *Munday's case* it appeared upon the special state of the order, that he had a good fortune with his wife, and therefore it was insisted that it was in nature of a *debt* due to the wife's mother; but the court clearly held, notwithstand-

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* This reasoning might apply upon an order of maintenance made previous to the marriage; as it is clear that a husband takes his wife, subject to all her legal debts and incumbrances, and it might in such case be contended, that such previous existing order, had, under the authority of the statute, created a charge for which he ought to answer.

† For the wife after her marriage hath no ability at all, the husband having all given unto him by the law by his intermarriage. 2 *Bulstrode*, 345.

ing this fortune which the son had with his wife, that the statute only extended to natural relations. The order was quashed. 1 *Bott*, *Const's ed.* 324.

Neither doth the statute extend to *reputed* relations; therefore the *reputed* grandfather of a poor orphan child cannot be ordered to maintain it; for if the child to be relieved be a bastard, it is clearly not within this clause of the statute. 2*Bulstrode*, 344.

But if a bastard be grown up, and by accident grow impotent, he may be *relieved* as a poor person within that statute. *Salkeld*, 123.

If the father is living and unable, the grandfather is chargeable; for in the *Q.* v. *Joyce*, *Mic.* 6 *Ann.* an order, that the grandfather should keep the grandchild, the father being living but unable to do it; and also to pay so much more money for the time past, while he was chargeable, as well as for the time to come, was confirmed. 16 *Viner*, 423.

Jurisdiction of the justices.

The justices of the district, in which the party, on whom the order of maintenance is made, dwells, have an exclusive jurisdiction; for it has been determined, that if the child live in the county of *Middlesex*, and be maintained by the parish there, and the grandfather live in the county of *Suffolk*, the justices of *Middlesex* can make no order therein; but the justices of the county of *Suffolk* may make an order, and thereby cause the money to be sent from thence to the parish in *Middlesex*. 2 *Bulstrode*, 344.

And the order must expressly state that the person on whom the same is made, lives within the justice's jurisdiction; for it is a general rule, that where an act of parliament gives a jurisdiction, the justices ought to shew the person to be within the jurisdiction which they have exercised over him.—*K.* v. *Woodford*, *Ea.* 20 *Geo.* 2. 1 *Bott*, *Const's ed.* 317.

And this order of maintenance must be made by the justices at *their quarter sessions*, and it must be so stated in the order; therefore, if the order states it to have been made at *a general sessions*, it is bad. *Comberbach*, 418. *Salk.* 476.

And the justices in sessions shall set *the rate* that is to be paid for their maintenance, and cannot transfer their authority over to other justices to do it; for this is all one as if an arbitrator should arbitrate another to make the arbitrement, which is not good. *Styles*, 154.

And the order of maintenance cannot direct the pauper to be sent to the person on whom it is made; therefore where an order was made for the *grandmother* to take care of her *grandchildren*; and by the order the grandchildren were sent to the grandmother.—The whole court were unanimous, that they could not send the grandchildren to the grandmother; but that

the justices ought to have made a rate upon the grandmother of so much a week. *Foley*, 53.

Also the order must adjudge, that the person in whose favour it is made is poor, or unable to work, impotent, or chargeable: —thus, in *St. Andrew's Undershaft* v. *Jacob Mendez de Breta*, *Mic.* 13 *Will.* 3, an order made upon the defendant, who was a Jew, to allow his daughter, whom he had turned out of doors for embracing christianity, 20*s.* a month, reciting that he was able to maintain her (he being very rich), was quashed; because the justices had no jurisdiction to make such an order, it not being within the statute; as it was not alleged that she was poor or likely to become chargeable to the parish *. 1 *Ld. Raym.* 699.

So also in *the K.* v. *Tripping*, *Tr.* 4 *Geo.* 1. an order was quashed for want of an adjudication that the party to be relieved was chargeable; and it was held, that an adjudication that the person is become chargeable, is as necessary in an order of the quarter sessions as in an order of justices. 16 *Viner*, 424.

So also in *the K.* v. *Gulley*, *Ea.* 1 *Geo.* 1. an order setting out that the pauper was in *a poor and destitute condition*, was quashed upon an objection that it did not appear that she was lame, blind, or unable to work; for though she was in a destitute condition, it might be because she would not work. *Foley*, 47.

Likewise in *the K.* v. *Litten*, *Ea.* 5 *Geo.* 1. it was objected that there was no adjudication that the pauper was impotent, only in the complaining part of the order; and the order was quashed. *Sett. Poor*, 111.

But the order may be made, to pay till the court shall order the contrary; for in *Jenkins's case*, *Ea.* 5 *Ann.* an order of sessions was made, that the defendant should pay two shillings weekly towards the support of his father, till that court should order to the contrary; which was held good, because it was indefinite and no set time limited, and if an estate should fall to the pauper, application might be made to the justices; otherwise if a time was limited. 2 *Salk.* 534.

But the order must state that the person on whom it is made is of sufficient ability; for in *the Q.* v. *Halifax*, *Hil.* 12 *Ann*, an order for the father to pay so much a week was quashed;

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* It appears by the journals of the *house of commons* of 18 *Feb.* and 12 *March* 1701, that this case was the occasion of passing stat. 1 *Ann.* *st.* 1. *c.* 30. whereby it is enacted, that if any JEWISH *parent*, 'in order to the compelling of his child, being a protestant, to change his religion, shall refuse to allow him a fitting maintenance, the lord chancellor may make order therein.'

And the like is enacted by 11 & 12 *Will.* 3. *c.* 4. *s.* 7, in respect to *popish parents* refusing to allow their protestant child a fitting maintenance.

because it was not said that he was of a sufficient ability. *Cases of Set.* 52.

Disobedience to an order of maintenance indictable.

If the order of maintenance is not obeyed, the party upon whom it is made may be indicted for his disobedience:—This was determined in the *K.* v. *Robinson*, *Tr.* 32 & 33 *Geo.* 2. It was a motion in arrest of judgment upon AN INDICTMENT against the defendant, for refusing to obey an order of the general quarter sessions, made upon him for his keeping and maintaining his two infant *grandchildren*—the objection to the indictment was, that 'the offence is not indictable, because the act of parliament has pointed out a particular punishment, and a specific method of recovering the penalty which it inflicts'.-After the case had been argued, lord *Mansfield* delivered his opinion. The rule is certain, that where a statute creates a new offence by prohibiting and making unlawful any thing which was lawful before, and appoints a *specific remedy* against such new offence (not antecedently unlawful) by a particular sanction, and particular method of proceeding, that particular method of proceeding must be pursued, and no other. And where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding, there either method may be pursued, and the prosecutor is at liberty to proceed either at common law, or in the method prescribed by the statute: because there the sanction is cumulative, and does not exclude the common law punishment. In the present case, a remedy existed before the statute of 43 *Eliz.* c. 2. for *disobedience to an order of sessions is an offence indictable at common law*. Here the relief is to be assessed and directed by order of sessions, and a particular proceeding in a summary way is prescribed by the act as a particular sanction and method of punishment in case of failure. But it is to be presumed, that the legislature then knew and considered that disobedience to an order of sessions was an offence indictable at common law: so that they must have intended that there should be, and there actually are, two remedies in the present case: one, to proceed by way of indictment, for disobeying the order where the weekly payment is neglected or refused to be made; the other, to distrain for the 20*s*. penalty after the expiration of the month. The former method has been taken in the present case: and there is no doubt but that an indictment will lie for disobeying an order of sessions *.—The court were therefore unanimously

* But he added, that notwithstanding there are two remedies given, yet it would be extremely oppressive to take the remedy by indictment, if there are no circumstances which obstruct the proceeding in the shorter way of summary remedy; this would indeed be very wrong and unreasonable, where the summary remedy can be put in practice. But in some cases it may be impracticable to proceed in the summary

of opinion, that the judgment ought not to be arrested. 2 *Burrow's Rep.* 799.

Whereas divers persons run away from their places of abode, some men leaving their wives or children, and some mothers leaving children upon the charge of the parish, although such persons have some estates, which should ease the parish, IT IS ENACTED BY 5 *Geo.* 1. *c.* 8, 'that it shall be lawful for the 'churchwardens or overseers, where any wife or children shall 'be so left, by warrant or order from any two justices, to seize 'so much of the goods, and receive so much of the annual 'rents and profits of the lands, of such husband, father, or mo- 'ther, as such justices shall direct, for the discharge of the 'parish for the providing for such wife, child, or children; 'which order being confirmed at the next quarter sessions, it shall 'be lawful for the justices there to make an order for the church- 'wardens or overseers to dispose of such goods and chattels by 'sale, or otherwise so much of them, for the purposes afore- 'said, as the court shall think fit, and to receive the rents and 'profits, or so much of them as shall be ordered by the sessions, 'of his or her lands and tenements, for the purposes aforesaid.' *s.* 1. Persons running away from their families.

'And the churchwardens and overseers shall be accountable 'at the quarter sessions for all money they receive by virtue of 'this act.' *s.* 2.

Also by 17 *Geo.* 2. *c.* 5*. 'all persons who run away or leave 'their wives or children, whereby they may become charge- 'able to the parish, shall be deemed rogues and vagabonds, and 'punished as such.' *s.* 2.

Also by the same act, 17 *Geo.* 2. *c.* 5. 'all persons who 'threaten to run away and leave their wives or children to 'the parish, shall be deemed idle and disorderly persons; and 'any justice may commit such offenders (being thereof convict- 'ed by confession, or oath of one witness) to the house of cor- 'rection, there to be kept to hard labour for not exceeding one 'month.' *s.* 1. Threatening to run away.

And the 32 *Geo.* 3 *c.* 45, after reciting that persons by their wilful default and neglect, permit their wives to become Neglecting to provide for their families.

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method by way of distress; as if the party upon whom the order is made be gone out of the county (which is said to be the case here), in which case the penalty cannot be levied by distress and sale, nor the offender committed by the justices. And there may also be a disobedience to the order, even before the month is out; and the forfeiture is only 20s. for every month which they shall fail; though that would be too severe, to indict for disobedience to the order with such very great haste, without waiting till the month should be expired.

* See this stat. and 32 *Geo.* 3. *c.* 45, next following, under title VAGRANTS.

chargeable to their parish, ENACTS 'that if it be made appear to 'two justices, that such person doth not use proper means to 'get employment, or if he is able to work, by his neglect of 'work, or by spending his money in alehouses or places of 'bad repute, or in any other improper manner, shall not apply 'a proper proportion of the money he earns towards the main-'tenance of his wife and family, by which they or any of them 'become chargeable to their parish, he shall be deemed an idle 'and disorderly person.' *s.* 8.

## *V. Appeal against the rate, and removal thereof by* certiorari.

Appeal to be made to next sessions.

By 17 *Geo.* 2. *c.* 38 * 'if any person shall be aggrieved by 'any assessment, or shall have any material objection to any 'persons being put in or left out of such assessment, or to the 'sum charged on any person or persons therein, he may, giving 'reasonable notice† to the churchwardens or overseers, appeal 'to the *next general or quarter sessions* for the county, riding, 'division, corporation, or franchise, and the justices there are 'to receive such appeal, and determine the same, but if rea-'sonable notice was not given, then they shall adjourn the said 'appeal to the next quarter sessions, *and then hear and deter-'mine the same*, and the said justices may award to the party 'for whom such appeal shall be determined, costs, in the same 'manner as in case of appeals concerning settlements‡.' *s.* 4.

'But in all corporations or franchises which have not four 'justices of the peace, it shall be lawful to appeal to the next 'general or quarter sessions of the peace for the county, riding, 'or division, where such corporation or franchise is situate.' *s.* 5.

'And upon all appeals from rates, the justices (where they 'see just cause to give relief) shall amend the same in such man-'ner only as shall be necessary for giving relief, without al-'tering such rates with respect to other persons mentioned in

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* Concerning appeals in general under the poor laws, and the construction of the statutes relating thereto, see p. 711, 712, supra.

† And he must state the ground of his appeal in the notice. *The K. v. Newberry, Nolan's Rep.* 27.

But if a person give notice of his intention to appeal to the quarter sessions against a poor's rate, but at such sessions does not enter any appeal, the sessions cannot award to the parish officers, the costs which they may have been put to in preparing to resist the appeal; for the quarter sessions have no authority to award costs under the stat. 17 *Geo.* 2. c. 38, unless an appeal has been entered and determined, for the determination of the appeal is a condition precedent to their power to give costs. *Rex* v. *Justices of Essex, Ea. Ter.* 40 *Geo.* 3. 8 *Ter. Rep.* 583.

‡ See 8 & 9 *Will.* 3. c. 30, under the title SETTLEMENTS AND REMOVALS, div. *removal of the poor*.

the same; but if upon an appeal from the whole rate, it shall be found necessary to quash the same, then they shall order 'the churchwardens and overseers to make a new equal rate.' *s.* 6.

The justices of the peace in their general or quarter sessions are to judge of any objection that may be made against the rate; therefore if any one thinks himself aggrieved by the assessment, as that it is unequal, or made for a longer period than the statute authorizes, or that persons who ought to be inserted are omitted, he must appeal to the sessions *. 11 *Mod. Rep.* 254. 1 *Bott, Const's ed.* 224. 4 *Burrow's Rep.* 2290. 1 *Burrows* 580. 6 *Term Rep.* 580.

And if any person who has an objection to the rate does not appeal to the sessions, he cannot bring trespass against those who distrain on him for non-payment of the rate; and if the sessions refuse to receive the appeal, the court of *King's Bench* will grant a *mandamus* to compel them to do it. 1 *Bott, Const's ed.* 224.

Notice of appeal to be in writing.

And by 41 *Geo.* 3. *sess.* 2. *c.* 23, 'All notices of appeal from 'or against any rate made for the relief of the poor, or from 'or against the account of the churchwardens and overseers, 'shall be in writing, and shall be signed by the person giving 'the same or his attorney on his behalf; and such notices shall 'be delivered to or left at the place of abode of the church-'wardens and overseers, or any two of them, and the particular 'causes of appeal shall be stated in such notice; and upon the 'hearing, the sessions shall not enquire into any other cause of 'appeal than such as is stated in the notice of appeal.' *s.* 4.

'But with the consent of the overseers, signified by them or 'their attorney in open court, and with the consent of any 'other person interested therein, the said court of sessions may 'proceed to hear and decide upon such appeal, although no no-'tice thereof shall have been given in writing; and also with 'the like consent to hear and decide upon grounds of appeal, 'not stated or mistated in such written notice where any no-'tice shall have been given in writing.' *s.* 5.

'Also formerly, if certain persons were omitted in a rate 'for the relief of the poor, the justices could not amend but 'were obliged to quash the whole rate.'

Whole rate need not be quashed.

But now by 41 *Geo.* 3. *sess.* 2. *c.* 23, 'upon all appeals 'from any rate made for the relief of the poor, the court of ge-'neral or quarter sessions of the peace shall (in all cases where 'they shall see just cause to give relief) amend such rate, either 'by inserting therein or striking out the name of any person,

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* Therefore the court of King's Bench will not grant a mandamus to make a rate, if one be already made, or an equal rate, if it is unequal; but if no rate is already made, a mandamus will lie to compel the churchwardens and overseers to make one. 1 *Bott, Const's ed.* 224. 4 *Burrow's Rep.* 2290.

'or by altering the sum therein charged on any person, or in 'any other manner which the said court shall think necessary 'for giving such relief, and without quashing or wholly setting 'aside such rate.'

'But if the said court shall be of opinion that it is necessary 'for the purpose of giving relief to the person appealing, that 'the rate should be wholly quashed, then the said court may 'quash the same.' *s.* 1.

'But nevertheless, all sums of money in and by such rate 'charged on any person may be levied and recovered by such 'ways, and in the same manner, as if no appeal had been made 'against such rate, and all sums of money which any person 'charged in such rate shall pay, or which shall be levied upon 'or recovered from him, shall be deemed payments, on account 'of the next effective rate which shall be made.' *s.* 1.

Rates may be levied in the mean time.

'And all sums of money at which any persons are rated, may 'be levied and recovered, notwithstanding the persons so rated, 'or any other persons, shall have given notice of appeal 'against such rate for any cause whatsoever: but if any per-'son rated shall give notice of appeal, then until the appeal 'shall have been heard, no proceedings shall be carried on to 'recover any greater sum than the sum at which he shall have 'been rated in the last effective rate which shall have been col-'lected.' *s.* 2.

Cases in which the rate shall not be levied.

'And in case the sessions shall upon appeal order any rate 'to be quashed, it shall be lawful for the said court to order 'any sum in such rate charged on any person, or any part of 'such sum, not to be paid, and in such case no proceedings shall 'be commenced; or if commenced, shall be no further carried on 'for the purpose of levying the payment of any sum so or-'dered, not to be paid: and no justice of the peace, constable, 'or other officer, or other person, shall be deemed a trespasser, 'or liable to any action, for any warrant, order, act, or thing, 'done for the purpose of levying payment, before he shall have 'had notice in writing of the order for the non-payment.' *s.* 3.

And on an appeal against a poor's rate, by certain persons omitted therein, and who insisted on being rated (not wishing to be exempt from paying the rates), a parishioner who is liable to be rated, but who in fact is not rated, is a competent witness to prove the rateability of the appellants: for it is an established point at *nisi prius*, that the liability to be rated is no objection to a person's being called as a witness.—*K.* v. *Prosser*, *Mic.* 31 *Geo.* 3. 4 *Term Rep.* 17. And the same doctrine was admitted in the case of the *K.* v. *South Lynn*, *Tr.* 34 *Geo.* 3. 5 *Term Rep.* 667.

But persons who are appointed by statute to be governors and directors of the poor, and made liable upon appeal against a rate made by them to the payment of costs in case the sessions

shall award any to the appellant, cannot be witnesses on such appeal, though in truth only trustees, and entitled to be reimbursed such costs out of the parochial fund ; for they are parties to the cause, and liable to the costs in the first instance*. *Rex* v. *Bermondsey*, *Mic.* 43 *Geo.* 3. 3 *East's Rep.* 7.

And in the case of *the K.* v. *Newberry*, *Mic.* 32 *Geo.* 3. it was held by the court, that where the appellant alleges that he has no rateable property within the place, the respondents should first shew that he has some property liable to be rated ; for it is impossible for the appellant in the first instance to prove the negative ; though it seems that if he objects to the quantum of the rate, the *onus* will lie on him. 4 *Term Rep.* 475.

And it seems that where an appeal is made against a poor's rate, on account of certain persons having been left out of the rate, *the notice* given by the appellant to the churchwardens and overseers, who are to make their defence for not inserting the persons whose omission is complained of, ought to expressly state *the names of the persons* omitted, that they may be able to account at the sessions for having omitted them, and come prepared to answer the complaint. 3 *Doug. on Elec.* 132. 1 *Bott, Const's ed.* 225.

Notice to be given to parties interested in appeal.

And by 41 *Geo.* 3. *sess.* 2. *c.* 23, 'If any person shall appeal 'against any rate, because any other person is rated or is omitted therein, or because any other person is rated at any greater or less sum than the sum at which he ought to be rated 'therein, or for any other cause that may require any alteration 'to be made in such rate with respect to any other person ; 'the person so appealing shall give such notice of appeal, in 'writing, as before mentioned, not only to the churchwardens or 'overseers, or two of them, but also to the other person so interested or concerned in the event of such appeal ; and such other 'person shall, if he shall so desire, be heard upon the said appeal ; 'and it shall be lawful for the sessions, on the hearing of such 'appeal, to order the name of such other person to be inserted 'in such rate, and him to be therein rated at any sum of money, 'or to order the name of such other person to be struck out of 'such rate, or the sum at which he is rated to be altered, in 'such manner as the court shall think right ; and the proper 'officer of the court shall forthwith add to or alter the rate accordingly.' *s.* 6.

Parties rated on appeal to pay.

'If upon the hearing of any appeal, the court shall order the 'name of any person to be inserted, and him to be rated, or 'shall order the sum at which any person is rated to be increa-

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* Yet a tenant who was rated to the poor's rate being indemnified by his landlord, was holden a competent witness *on the behalf of the parish* in which he was a payer, on a question of settlements. See *Rex* v. *Woodland*, inserted under SETTLEMENTS and REMOVALS. See APPEAL. 3 *East's Rep.* 11.

'sed, in such case the sum so ordered to be rated or to be in-'creased, or so much thereof as shall not have been already 'paid may be recovered in the same manner, as if he had been 'originally named in such rate. *s.* 7.

Money to be repaid with costs to the parties overrated.

'If upon the hearing of any appeal, the sessions shall order 'the name of any person to be struck out, or the sum rated 'to be decreased; and if it shall be made appear that such 'person hath previously paid any sum in consequence of such 'rate which he ought not to have paid, then the court shall 'order such sum to be repaid by the churchwardens and over-'seers, together with all reasonable costs, occasioned by such 'person having paid or been required to pay the same; and 'the sum so ordered to be repaid, may, together with all such 'costs, be levied and recovered from them by distress, and all 'such other ways as money charged on any person by the rate 'made for the relief of the poor can be by law levied or reco-'vered.' *s.* 8.

Certiorari.

In the *King* v. *Uttoxeter*, *Ea.* 5 *Geo.* 1. it was held upon great deliberation, that a *certiorari* does not lie to remove the poor's rate itself, the remedy being by appeal or by action when a distress is taken; which will answer all the ends of justice in coming at an equal rate; whereas if the rate itself should be sent up, great inconveniences to the poor and delays would follow. 2 *Strange*, 932. *Case of Sett.* 317. 1 *Bott*, *Const's ed.* 251.

And in *the K.* v. *the Justices of Shrewsbury*, *Ea.* 7 *Geo.* 2. —The court said, that the true objection against a *certiorari* is, that if poor's rates were removable, the poor might be starved while the rates were depending here; and therefore the court, from the great inconvenience that would attend the removal of rates, have always refused to do it. 2 *Strange*, 975.

## *VI. Levying the poor's rate.*

Rates to be levied by distress.

'It shall be lawful, as well for the present as subsequent 'churchwardens and overseers, or any of them, by warrant 'from two justices (1 *Qu.*), to levy the said sums, and all ar-'rearages, of every one that shall refuse to contribute accord-'ing as they shall be assessed, by distress and sale.' 43 *Eliz.* c. 2. *s.* 4.

'And the goods of any person assessed and refusing to pay, 'may be levied by warrant of distress, not only in the place 'for which such assessment was made, but in any other place 'within the said county or precinct; and if sufficient distress 'cannot be found within the said county or precinct, on oath 'thereof before some justice of any other county or precinct, '(which oath shall be certified under the hand of such justice 'on the warrant), such goods may be levied in such other 'county or precinct; and if any person find himself aggrieved 'by such distress, he may appeal to the *next general or quarter*

'*sessions* for the county or precinct where the assessment was 'made.' 17 *Geo.* 2. *c.* 38. *s.* 7.

And in defect of such distress, it shall be lawful for such two justices to commit the party to the common gaol of the county, there to remain without bail or mainprise, until payment. 43 *Eliz. c.* 2. *s.* 4.

Imprisonment in default of distress.

'And if any person shall neglect to pay any sum that he shall 'be rated to, the succeeding overseers are to levy such arrears, 'and out of the money so levied reimburse their predecessors all 'sums which they have expended for the use of the poor, and 'which are allowed to be due to them in their accounts.' 17 *Geo.* 2. *c.* 38. *s.* 11.

Succeeding overseers to levy arrears to reimburse the former.

'And it shall be lawful for all justices to execute all acts, so 'far as the same shall relate to parochial taxes, levies or rates, 'notwithstanding any such justices are rated to, or chargeable 'with any such rates; provided that nothing herein shall autho-'rize any justice to act in the determination of any appeal 'to the sessions from any matter relating to any parish or place 'where such justice is so taxed or chargeable*.' 26 *Geo.* 2. *c.* 18. *s.* 1, 2.

Justices may act though rated themselves.

'And when any distress shall be made for money justly due 'for the relief of the poor, the distress itself, shall not be deem-'ed unlawful, nor the party making it a trespasser on account 'of any defect in the warrant for the appointment of such 'overseers, or in the rate or in the warrant of distress; nor 'shall the party distraining be deemed a trespasser *ab initio* 'on account of any irregularity afterwards done by him; 'but the party aggrieved by such irregularity, shall recover 'satisfaction for the special damage sustained, and no more, 'in an action of trespass or on the case.' 17 *Geo.* 2. *c.* 38. *s.* 8.

Distress not unlawful for want of form.

'Provided that where the plaintiff recover, he shall be paid 'his costs.' *s.* 9.

'But no plaintiff shall recover for any irregularity as afore-'said, if tender of amends hath been made by the party distrain-'ing before such action brought.' *s.* 10.

It was ruled by *Holt*, Ch. J. in *Tracy* v. *Talbot*, *Tr.* 3 *Ann.* that the poor rate cannot be distrained for by virtue of a general warrant made before the rate†, but there ought to be a special warrant. 2 *Salk.* 532.

Poor's rate to be distrained for by a special warrant.

And it seems that a warrant to distrain ought not to be granted before the rate has been demanded and payment thereof refused. 1 *Bott*, *Const's ed.* 207.

Also he must be previously summoned and heard in h is defence

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* See p. 134, 135, supra,

† The general warrant seems to be only a confirmation of the assessment for the poor.

for he may have just cause to shew against the issuing of the warrant of distress; such as that he has already paid it to one of the parish officers, who has not accounted for it, that the rate was never demanded, or that he has appealed against the same; or that the rate itself is a mere nullity, by reason of its not having been duly allowed and published, or the like; for a warrant of distress is in the nature of an execution, and a summons must of necessity precede it; for it is an invariable maxim in our law, that no man shall be punished before he has had an opportunity of being heard, whereas if a warrant of distress were to be issued without any previous summons, the party would have no opportunity of shewing cause why the execution should not issue against him.

Thus in *Stevens* v. *Evans*, *Ea.* 33 *Geo.* 2. in *April* 1759, an assessment was made and published for the poor's tax, in which *W. Vesey* was assessed. In *July* following he died intestate, and the *December* following administration was granted to the plaintiff. In *January* 1760, two justices issued a warrant reciting the assessment: and whereas it appeared that the said 9*l.* 15*s.* had been lawfully demanded of the said *W. Vesey* deceased and of his widow and representative since his decease, who have refused and doth refuse to pay the same, it requires the churchwardens, &c. to distrain the goods and chattels of the late *W. Vesey*. By virtue of this warrant the defendants on the 19th *January*, 1760, distrained cattle which were the property of *W. Vesey* in his life-time, and at his death, and on the lands occupied by him. The question was, *whether distraining the cattle of* W. Vesey *in the hands of his administrator, by virtue of the said warrant, was legal?*—*Wilmot*, J. I have not the least doubt but that *the representative ought to have been convened before the justices, and asked, why he should not pay the rate assessed upon* Vesey, *his intestate*. This is like a *scire facias* upon a judgment, upon which execution cannot be sued out against the representatives, without asking them why it should not be taken out. At the time of the *teste*, they were the chattels of the representative. If the *teste* had been prior to the death, they would have been the chattels of the deceased. 'If the money had been demanded of the representative, I should have had great doubt whether this distress was 'not good. For though the rate is a charge upon the person, yet 'it is so in respect of the thing occupied: though he is called an 'offender if he refuse to pay it, yet he can be no otherwise 'considered as an offender, than every other debtor, who refuses 'or neglects to pay his debts, and thereby renders his person and 'goods liable to be taken in execution, is so far treated as an 'offender, till he shall comply with the judgment awarded.' And I know that these payments by administrators are very often allowed to go in discharge of the assets of the intestate. In a case of *Wallis, administrator*, v. *Hewit*, at the sittings in

*Guildhall*, 5 *Geo.* 1, before Ld. Ch. J. *Eyre*, two aldermen of *London* had made a warrant to distrain for a poor's rate. The man died intestate, but a demand had been made upon him before the warrant was granted. The Ch. J. held, that *a distress could not be made after his death, or that if it could, his representative ought to have been summoned, and he held the property to be changed.* To distrain a man's goods without hearing him, would make strange confusion in the administration of assets; he may have retained or paid judgment debts prior to this distress for the rate. I have no doubt but the plaintiff here is entitled to his judgment. *Denison* J. (lord *Mansfield*, Ch. J. and *Foster* J. being absent) concurred*. 2 *Burrow's Rep.* 1152.

But it has been held that a warrant may be made to distrain before the time for which the rate is made is expired. *Charlwood* v. *Best*, 1 *Bott*, *Const's ed.* 207.

In the case of *Harper* v. *Carr*, Ea. 37 *Geo.* 3. B. R. it was in the argument said, that justices of the peace act ministerially in granting a warrant of distress for non-payment of a poor rate, in the same manner as when they allow a rate. But the court observed that the case of allowing a poor rate is the only instance in which the justices act ministerially †; but in the instance of granting a warrant of distress, the justices act judicially, and are to exercise their discretion by enquiring into the merits of the case before they grant or refuse the warrant of distress, in the same way as they do on the hearing of any other complaint; the issuing a warrant of distress is therefore not a *ministerial* act and matter of course. 7 *Ter. Rep.* 270.

And if the justices refuse to sign a warrant of distress, the court will grant a mandamus to compel them to receive such informations and complaints as have been or shall be duly laid before them against such persons as have neglected or refused, or shall neglect or refuse, to pay the sums respectively assessed on them by the rate, and to proceed thereupon to levy the said several sums. But the court will not issue a mandamus to order the justices, in the first instance, to issue a warrant of distress, unless the parties have been previously summoned by the justices; for by Ld. Kenyon, I cannot subscribe my assent to the decision in the *K.* v. *the Justices of Middlesex*: the assessment of a poor's rate, unless it be set aside, must be enforced, and *if the*

Mandamus to the justices to enforce payment of the rate.

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* As this question was decided upon the ground that there was no previous demand made on the representative; the principal point, *Whether the effects of a person rated, and who shall die before payment of the rate, are liable in the hands of the executor or administrator to answer the same?* seems to be left undetermined.

† For there the allowance alone does not put the rate into a state to be assessed, for it is still open to an appeal.

*magistrates will not issue a summons to the person who refuses to pay the rate*, this court will grant a mandamus to compel them to do it; but *a summons must precede a warrant of distress*, which is in the nature of an execution. *The K. v. Benley Church, Hil. Ter.* 35 *Geo.* 3. 6 *Term Rep.* 298.

But although in a proper case the court will grant a mandamus as above, because without it payment of the rate cannot be enforced; yet as the mandamus will be no justification to the magistrates, they will take care not to compel them to do an act which may not be warranted by law; therefore if the rate be void, as if it be not published in the church, the next *Sunday* after it is allowed, the court will not grant a mandamus to compel the justices to sign a warrant of distress under it, because it is a mere nullity, and payment under it cannot be enforced, although not appealed against at the sessions. *K. v. Newcomb, Tr.* 31 *Geo.* 3. 4 *Term Rep.* 368.

No mandamus will be granted to compel overseers to levy an assessment.

Neither will the court grant a mandamus to compel the overseers to collect an individual rate; for in *the K. v. the overseers of St. Mary, Norwich, Mic.* 32 *Geo.* 3. a mandamus being moved for, to compel the overseers to collect a rate at which they had assessed the rector of the parish—*The Court* said, We cannot grant it: the party has a remedy, if no other way, at least by indicting the overseers. *Nolan's Rep.* 28.

## *VII. Relief and ordering of the poor.*

The overseers of every parish with the consent of two justices, shall take order for the relief of the poor.

'By 43 *Eliz.* c. 2, the churchwardens and overseers of 'every parish* shall take order from time to time, with the consent of two justices (1 *Qu.*) dwelling in or near the same parish 'or division, for setting to work the children of all such whose 'parents shall not by the said churchwardens and overseers 'be thought able to keep and maintain their children; and for 'setting to work all such persons married or unmarried, having 'no means to maintain them, and using no ordinary and daily 'trade: AND ALSO, to raise weekly or otherwise (by taxation 'as aforesaid) a convenient stock of flax, hemp, wool, thread, 'iron, and other necessary stuff, to set the poor on work: AND 'ALSO, competent sums for the necessary relief of the lame, impotent, old, blind, and such other among them being poor and 'not able to work: AND ALSO, for the putting out such children 'to be apprentices†.' *s.* 1.

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* And of every township and village where overseers are appointed, under the authority of 13 & 14 *Car.* 2. *c.* 12. *s.* 21. See p. 673, 674 supra.

† The putting out of poor children apprentices, is fully treated of under title APPRENTICES.

'And the said churchwardens and overseers shall meet together at least once every month in the church upon the *Sunday* in the afternoon after divine service, to consider of some good course to be taken, and of some meet order to be set down in the premises*.' *s.* 2.

And shall meet once a month to consult respecting the relief and ordering of the poor.

'The churchwardens and overseers may, with the consent of two justices, whereof one of the *quorum*, and where there are no more than one, with the assent of that one justice, set up any trade, only for the setting on work and relief of the poor.' 3 *Car.* 1. *c.* 5. *s.* 22.

Overseers may set up trades.

'And the said justices or one of them, shall send to the house of correction or common gaol, such as shall not employ themselves to work, being appointed as aforesaid: and any two justices to commit to prison the churchwardens and overseers which shall refuse to account.' 43 *Eliz. c.* 2. *s.* 4.

Poor people refusing to work may be sent to the house of correction.

'And it shall be lawful for the churchwardens and overseers, by leave of the lord of the manor whereof any waste or common within their parish is parcel, to build in such waste at the charges of the parish, or of the hundred or county as aforesaid, houses of dwelling for the poor, which cottages shall not be used for any other habitation, but only for impotent and poor of the parish.' *s.* 5.

May erect habitations for the poor on wastes.

'And for the greater ease of parishes in the relief of the poor, IT IS ENACTED, that it shall be lawful for the churchwardens and overseers †, with the consent of the major part of the parishioners or inhabitants, in vestry or other public meeting for that purpose assembled, or of so many of them as shall be so

Churchwardens, &c. with consent of parishioners, may contract for the employing and maintaining the poor.

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* But this penalty for not meeting in the church cannot be inflicted on overseers of extraparochial places; for the inhabitants of such places have no church to meet in. *The K.* v. *Rufford, Ea.* 7 *Geo.* 1. 8 *Mod. Rep.* 39.

† *It shall be lawful for the churchwardens and overseers*] It has been decided on this clause of the statute, that it is not necessary that ALL the churchwardens and overseers should concur; but that the contract of *the majority of them*, with the consent of the major part of the parishioners, will bind the rest, for the stat. 43 *Eliz. c.* 2, has directed that the general acts to be done by the churchwardens and overseers respecting the poor, shall be done *by the majority of them*; and the spirit of that statute pervades all the subsequent acts respecting the government of the poor. And this statute is to be considered as engrafted on the 43 *Eliz. c.* 2, qualifying the particular act, but referring for the execution of it to the manner pointed out by that statute. *The K.* v. *Beeston, Ea.* 30 *Geo.* 3. 3 *Term Rep.* 502,

'assembled, upon usual notice thereof first given, to purchase or 'hire any house or houses in the same parish, township, or place, 'and to contract with any person or persons for the lodging, 'keeping, maintaining, and employing any or all such poor in 'their respective parishes, townships, or places, as shall desire to 'receive relief or collection; and there to keep, maintain, and 'employ all such poor persons, and take the benefit of the 'work, labour, and service of any such poor persons, who shall 'be kept or maintained there, for the better maintenance and 'relief of such poor persons who shall be there kept or main-'tained.' 9 *Geo.* 1. *c.* 7. *s.* 4.

Poor persons refusing to go into the work-house shall be put out of the books.

'And if any poor person shall refuse to be lodged, kept, or 'maintained in such house or houses, he shall be put out of the 'book where the names of persons who ought to receive collec-'tion are registered, and shall not be intitled to ask or receive 'collection or relief.' 9 *Geo.* 1. *c.* 7. *s.* 4.

But overseers with the approbation of the parishioners or any justice may relieve poor persons at home.

But this last provision having been found to have been inconvenient and oppressive, IT IS ENACTED by 36 *Geo.* 3. *c.* 23. 'that it shall be lawful for the overseers, with the approbation 'of a majority of the parishioners in vestry, or with the ap-'probation in writing of one justice usually acting in and for 'the district, to pay collection and relief, to any industri-'ous poor person, at his or her home or house, under certain 'circumstances of temporary illness or distress, and in certain 'cases respecting such poor person, or his or her family, or re-'specting the situation, health, or condition of any poor house 'in any parish, town, township, or place, wherein a house shall 'have been hired, built, or purchased, and a contract made with 'any person for lodging, keeping, maintaining, and employing 'any poor persons who shall desire to receive collection or re-'lief, although such poor person shall refuse to be lodged, 'kept and maintained, within such house.' *s.* 1.

Justices may order relief to poor persons at their own homes.

And it shall be lawful for any justice usually acting in and for the district, at his just discretion, to order relief to any industrious poor person, and they shall be entitled to ask and to receive such relief at their homes or houses, notwithstanding any contract made with any person for lodging, keeping, maintaining, and employing poor persons in a house for such purpose hired or purchased: and the churchwardens and overseers are to obey such order. *s.* 2.

Cause of ordering such relief to be assigned on the order of the justice, and the order to remain in force for one month only, unless otherwise directed by two justices.

Provided always that the special cause of ordering relief at home be assigned, and written on each order for relief given by any justice as aforesaid; and that such order be given for, and do remain in force for not to exceed one month from the date: but it shall be lawful for two justices to make any further order for the same or like purpose, for any further time not exceeding one month, from the date of such order, and so on from time to time, as the occasion shall require; such justice or justices first administering an oath as to the need and cause of such re-

lief in each of the above cases, and thereon summoning the overseers to shew cause why such poor person should not receive such relief, in manner as by law provided in cases where no contract for lodging, keeping, and maintaining the poor, shall as aforesaid have been made.

Nothing in this act shall extend to the poor, relievable in *incorporated districts*, under 22 *Geo.* 3. *c.* 83, (see head Incorporated districts,) or under the authority of any special act of parliament. *s.* 4. Not to extend to incorporated districts.

'And where any parish, town, or township, shall be too 'small to purchase or hire such house or houses for the poor of 'their own parish only, it shall be lawful for two or more such 'parishes, townships, or places, with the consent of the major 'part of the parishioners or inhabitants, in vestry or other public 'meeting for that purpose assembled, or of so many of them as 'shall be so assembled, upon usual notice thereof first given, and 'with the approbation of any justice, dwelling in or near such 'parish or place, signified under his hand and seal, to unite in 'purchasing, hiring, or taking such house, for the lodging, 'keeping, and maintaining of the poor of the several parishes 'or places uniting, and there to keep, maintain, and employ 'such poor of the respective parishes so uniting, and to take 'and have the benefit of their work, labour, or service, for the 'better maintenance and relief of the poor there kept, maintain-'ed, and employed.' 9 *Geo.* 1. *c.* 7. *s.* 4. If one parish be too small for the purchase of a workhouse, two parishes may unite.

'And if any poor person in the parishes, townships, or places 'so uniting, shall refuse to be lodged, kept, and maintained in 'the house hired or taken for such uniting parishes or places, he 'shall be put out of the collection book, and not entitled to 'ask relief.' *s.* 4. Poor persons refusing such provision to have no relief.

'But no poor person or his apprentice, or child, shall ac-'quire a settlement in the parish or place to which they are re-'moved by virtue of this act; but their settlement shall remain 'in such parish or place, as it was before such removal.' *s.* 4. Poor persons removed to workhouses not to gain a settlement there.

'But no contract made by the churchwardens and overseers 'with any person for the lodging, keeping, maintaining, or em-'ploying of the poor of such parish, or parishes, where two or 'more are united, and for taking the benefit of their work, la-'bour, and service, for their better maintenance and relief, shall 'be valid, binding, or effectual, unless the person during the 'continuance of the contract be resident within the parish con-'tracting, or within the parish in which such poor shall be lodg-'ed.' 45 *Geo.* 3. *c.* 54. *s.* 1. No contract to be valid unless the contractor be resident in the parish.

'Nor unless one or more responsible householders, resident 'in such parish, and to be approved of by the churchwardens, 'or overseers, shall, at or before the signing such contract, by 'their joint and several bond, with a penalty in not less than the 'amount of one half of the assessment to the poor's rate of such Nor unless security be given by the contractor.

'parish, or united parishes, for the year next but one preceding 'that in which such contract shall be entered into, give security 'to the said churchwardens and overseers for the true and faith-'ful observance and performance of such contract, on the part of 'the person so to be contracted with as aforesaid. *Ibid.*

Nor unless approved of by two justices.

'Nor unless such contract shall be approved of and signed by 'two justices of the peace acting for such county, in which 'such parish, or united parishes or one of them shall be situ-'ated.* *Ibid.*

Contracts contrary hereto to be void.

'And all contracts entered into otherwise, shall be absolutely 'null and void to all intents and purposes. *s.* 2.

Or if the contractor leaves the parish.

'And every contract entered into conformably to this act, 'with any person who shall remove from, and cease to reside in 'the parish, before the expiration of the whole term for which 'such contract shall be intended to have continuance, shall also 'from the time of such removal cease. *Ibid.*

'But the removal of such person shall not vacate the security 'entered into; but the same shall continue in full force for the 'indemnification of the churchwardens and overseers against 'any loss or expence incurred in consequence of such non-per-'formance of such contract and of such removal. *Ibid.*

Exceptions.

'And nothing in this act shall extend to any parish, town-'ship, or place, where the poor are maintained, under any spe-'cial act of parliament. *Ibid.*

'Also nothing in the act shall extend to make void any con-'tract entered into before June 27th, 1805. *Ibid.*

Justices of the peace to visit and inspect parish workhouses, to see that the poor are taken proper care of.

'And by 30 *Geo.* 3. *c.* 49, it shall be lawful for any justice 'of peace, or any physician, surgeon, or apothecary, authorized, 'by warrant under the hand and seal of such justice, or for the 'officiating clergyman of the parish, so authorized, to visit in the 'day time any parish workhouse, or house kept for the mainte-'nance of the poor of any parish or place, within the county or 'division wherein such justice shall be resident and have jurisdic-'tion, to examine into the state of the poor people therein, and 'the food, clothing, and bedding, of such poor people, and the 'state of such house; and if upon such visitation the said justice 'or persons authorized shall find any cause of complaint, then 'such justice or persons authorized shall certify the state of such 'house, and of the poor therein, and of their food, clothing, 'and bedding, to the next quarter-sessions, under their hands 'and seals; and such justice or persons authorized as aforesaid, 'shall cause the overseers, or master of the house, to be sum-'moned to appear at the sessions, to answer such complaint; 'and such sessions, on hearing the parties, shall make such 'orders and regulations for the removing of any cause of com-

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* The authority here given to the magistrates is of a judicial nature, and they must consequently act together, and not separately. *W.*

'plaint contained in such certificate, as to them shall seem 'meet; and all the parties shall abide by such orders. *s.* 1.

'But in case any justice, or persons authorized as aforesaid, 'shall, upon such visitation, find any of the poor afflicted with 'any infectious disease, or in want of immediate medical or other 'assistance, or of sufficient and proper food, or requiring sepa- 'ration or removal from the other poor, then if such visitation 'be made by a justice, he shall apply to another justice, and cer- 'tify to him the state of the poor in such house; or if such visi- 'tation shall be made by the persons authorized as aforesaid, 'such persons shall apply to two justices, and thereupon the 'said justices shall make such order therein, under their hands 'and seals, as they shall think proper, until the next sessions, 'at which sessions they are to certify the same under their hands 'and seals, who are to make such order for the further relief of 'the poor in such house, as to them shall seem meet; and the 'charges of relieving such poor shall be paid out of the poor 'rate of such place, in such manner as such sessions shall direct.' *s* 2.

'But this act shall not extend to workhouses regulated by any 'special act of parliament.' *s.* 3.

The use of spirituous liquors prohibited in poor houses.

'And by 24 *Geo.* 2. *c.* 40. *s.* 13, 14, 15, no spirituous liquors 'shall be sold or used in any workhouse or house of entertain- 'ment of parish poor*.'

Poor persons relieved out of the poor-house to be registered.

'There shall be provided and kept in every parish a book, 'wherein the names of all persons who receive collection shall 'be registered, with the day and year when they were first ad- 'mitted to have relief, and the occasion which brought them 'under that necessity.' 3 *Will. & Mar. c.* 11. *s.* 11.

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* It is enacted by the above stat. 24 *Geo.* 2. *c.* 40. that no licence shall be granted for the retailing of spirituous liquors within any work-house, or house of entertainment for any parish poor, and if the master or any officer there shall sell, use, lend, or give away, or knowingly suffer any spirituous liquors to be sold, &c. or brought in, except such as shall be given by the direction of a physician, surgeon, or apothecary, and applied from the shop of some apothecary, he shall forfeit 100*l.* one moiety to the king, and the other with costs to the informer by action; and if he again offend, and be a second time convicted, he shall forfeit his office. *s.* 13.

And any justice, upon information upon oath, that any such spirituous liquors are kept and disposed of in any such place, may enter and search, or authorise any constable, or peace officer by warrant, to enter and search such place, and in case any spirituous liquors be found therein (except such as are directed to be used medicinally) such officer may seize and cause the same to be staved and destroyed. *s.* 14.

And no person shall carry or bring, or attempt to bring any distil-

Parishioners yearly in *Easter* week shall make a list of their poor.

'And yearly in *Easter* week (or as often as it shall be thought 'convenient) the parishioners shall meet in the vestry or other 'usual place of meeting, before whom the book shall be pro'duced; and all persons receiving collection to be called over, 'and the reasons of their taking relief examined, and a new list 'made and entered of such persons as they allow to receive 'collection.' *s.* 11.

None but those in the lists to receive alms, except by order of justices of peace, &c.

'No other person shall be allowed to receive collection at the 'charge of the parish, but by authority under the hand of one 'justice residing within such parish, or (if none be there dwell'ing) in the parts near or next adjoining, or by order of the 'justices in their quarter-sessions, except in cases of pestilential 'diseases, plague, or small-pox, for such families only as shall 'be therewith infected. *s.* 11.

No justice to order relief without oath made of a reasonable cause for such relief.

'But no justice of peace shall order relief to any poor person, 'till oath be made before such justice of some matter, which he 'shall judge to be a reasonable cause for such relief, and that 'the person had applied for relief to the parishioners at some 'vestry or public meeting, or to two of the overseers, and was 'by them refused; and till such justice has summoned two of 'the overseers to shew cause why such relief should not be given, 'and the person so summoned hath been heard, or made default 'to appear. 9 *Geo.* 1. *c.* 7. *s.* 1.

Persons ordered to be relieved to be entered in the books.

'And the person, whom such justice shall order to be re'lieved, shall be entered in the parish books as one of those 'who is to receive collection, as long as the cause for such re'lief continues, and no longer. And no officer of any parish 'shall (except on sudden occasions) bring to the account of the

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led spirituous liquors (except in the way of medicine) into any such place as aforesaid; and if any person offend therein, the master or other officer, or his servants, may apprehend such person, and carry him before a justice; and if by the oath of one witness, or otherwise, the justice convict such person, he shall commit him to prison, or the house of correction, for not exceeding three months, unless he immediately pay not exceeding twenty nor less than ten pounds: to be paid one moiety to the informer, and the other moiety to the use of the poor of such house. *s.* 15.

Every master of such poor-house shall procure a copy of the three preceding clauses, to be printed or written, and hung up in one of the most public places of the house, and renew the same from time to time, so that it may be always kept legible, on pain of forfeiting 40*s.* to be levied by warrant of any justice on conviction, in a summary way, by the oath of one witness; and any justice may enter into any such place within his jurisdiction, and demand a sight of such copy, and if not forthwith shewn him, he may immediately convict such master; one moiety of the penalty to be paid to the informer, and the other moiety (or the whole if there is no informer) to the poor of such house. *s.* 15.

parish any monies he shall give to any poor person who is not 'registered in the parish book, on forfeiture of 5*l.* to be levied by distress and sale, by warrant of two justices, who 'shall have found him guilty of such offence; to be applied for 'the use of the poor by direction of the justices.' *s.* 2.

'And every such person as shall be upon the collection of 'any parish, and the wife and children of such person cohabiting in the same house (such child only excepted as shall 'be by the churchwardens and overseers permitted to live 'at home, in order to attend an impotent parent) shall upon 'the shoulder of the right sleeve of the uppermost garment, 'wear such badge as is herein mentioned, *viz.* a large Roman 'P, with the first letter of the name of the parish cut in red or 'blue cloth, as by the churchwardens and overseers shall be 'directed; and if any such poor person shall neglect or refuse 'to wear such badge, any justice of peace may punish such offender, either by ordering his allowance to be abridged, suspended, or withdrawn, or by committing such offender to the 'house of correction to be whipt, and kept to hard labour for 'any number of days not exceeding twenty-one; and if any 'church-warden or overseer relieve any such poor person, not 'wearing such badge, being convicted upon the oath of one 'witness, before any justice of peace, he shall forfeit twenty 'shillings, to be levied by distress and sale of goods by warrant of any such justice, one moiety to the informer, and 'the other to the poor of the parish.' 8 & 9 *Will.* 3. *c.* 30. *s.* 2.

Poor persons receiving relief to wear a badge.

And by 9 *Geo.* 3. *c.* 37, 'if any churchwarden or overseer, 'or other person authorised by them to make payments to the 'relief of the poor, shall wilfully and knowingly make any 'such payment in base or counterfeit money, or in other than 'lawful money of *Great Britain*, upon complaint thereof made 'to any justice of the county, division, or place, it shall be 'lawful for such justice to summon the person charged with 'such offence, and in a summary way upon his non-appearance 'or confession, or upon proof of the offence upon oath of one 'witness, to adjudge the party offending to forfeit for each 'offence not less than ten, nor more than twenty shillings; 'and to levy the same by distress and sale; and to be applied 'for the use of any poor person or persons of the parish, 'township or place, in such manner as the justice shall appoint.' *s.* 7.

Overseers shall not relieve the poor in other than the good and lawful money of Great Britain.

Poor persons cannot be relieved out of their own parishes, for in the case of *Clypton* v. *Ravistock*, *Ea.* 11 *Ann.* where an order reciting that a man and his wife were last settled in *Clypton*, ordered the churchwardens to repair to *Ravistock*, and to relieve them, being so sick that they could not be removed—The Court said, that the justices have no authority to send for officers out of another parish, but are bound to maintain the

Poor persons to be relieved in their own parish.

poor as long as they continue with them. And it was added by *Powel* J. that parishioners are not to be relieved till they are carried to the parish *. *Poor's Sett.* 49.

Order of relief may be made originally, either by one justice, or at the sessions, and there is no appeal from such order.

The order of relief may be made either by one justice of the peace, or by the court of quarter-sessions. For the words of the statute 3 *Will. & Mar.* c. 11. s. 41. (see p. 800, 801, supra) are, "*By authority under the hand* of one justice of "peace residing within such parish, or (if none be there dwell-"ing) in the parts near or next adjoining, or *by order* of the "justices in their respective quarter-sessions." But if it be made by the sessions, it must be by an *original order*, and not upon an appeal; for the jurisdiction of the individual justices, and of the sessions, is in this respect concurrent, and whether the order be made by one justice, or by the sessions, it is conclusive and cannot be appealed against. This was determined in *the K.* v. *North Shields*, *Hil.* 20 *Geo.* 3, which was as follows: A justice of the peace made an order upon the churchwardens and overseers of the township of *North Shields*, to pay the sum of two shillings and six-pence weekly unto a woman, *for and towards the support of her three children;* the sessions *on appeal* confirmed this order, and stated a case, the object of which was to obtain the opinion of the court, upon a question, Whether persons applying to the parish for relief for their infant children, *but not for themselves*, are entitled to such relief if they refuse to go into the workhouse?—The case was argued upon this point, but THE COURT determined it upon the ground that the quarter-sessions had no appellate jurisdiction; for by *Willes* J. who delivered the opinion of the court, We think it unnecessary to give an opinion upon the point made at the bar: *because on another ground we are all clear, that the order of sessions must be quashed.* That court had no jurisdiction upon this subject, as no appeal lies from an order of maintenance; and the reason is, lest, while the point is litigating, the poor should starve. That, in making orders for the relief of the poor, the statute 3 *Will. & Mary*, c. 11. s. 11. gives any justice in the parish, or adjoining to it, if none be there, a concurrent jurisdiction with the justices in session. The act of 9 *Geo.* 1. c. 7. s. 4. makes no alteration in this respect, neither is any appeal given by either statute, nor in principle could there be, in any case in which the court of quarter sessions exercise original jurisdiction; as in such case it would be *ab eodem ad eundem.* Therefore let the order of sessions be quashed. 1 *Doug.* 8*vo. ed.* 330. *Caldecot's Cas.* 68.

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* But bastard children remaining with their mother for nurture, being irremoveable, are to be relieved by the parish where they were born in, that parish, where the mother is settled and resides. See the case of the *K.* v. *Hemlington*, in vol. i. p. 335.

And it seems that the order of relief, whether it be made by one justice or by the sessions, ought to state that it was made upon oath; for in *the K. v. Winship and Grunwell, Mic.* 11 *Geo.* 3, the defendants being indicted for refusing obedience to an order of sessions, ordering relief to a poor person; one objection was, that the order itself was bad, as it was not alledged to have been made on oath.—And by lord *Mansfield.* By 9 *Geo.* 1, no justice can order relief to a poor person; *until oath be made* that he has applied at some public parish-meeting and has been refused; and the overseers are to be summoned to shew cause. Now the mischief and the remedy are both applicable to *all justices*, either singly or sitting collectively at the sessions: and *though the act of parliament only mentions one justice, yet it must be understood of every number of justices*, having cognizance of the matter. This order then not being stated or found to have been made upon oath, is clearly bad; and there is no enforcing it. *Caldecot's Cas.* 75.

Order must be stated to be made upon oath.

Also the order of relief must state that the person in whose favour it is made, is a poor and impotent person. In the *K.* v. *Inhabitants of Hyworth, Mic.* 3 *Geo.* 1, there was an order to pay three shillings weekly to *A.* by the parish of *Hyworth*, so long as he should continue poor.—It was objected that it ought to appear in the order, that the person relieved is poor and impotent.—*Parker* Ch. J. I favour these orders as much as I can, because nobody takes care to draw them up for the poor. But it must be quashed. *Ibid.*

Order must state the person to be poor.

And on the authority of the above case an order was quashed in the *K.* v. *Stoke Urfey, Ea.* 3 *Geo.* 1, for the same fault; and another, the *K.* v. *Tippers, Ea.* 4 *Geo.* 1, on an order to maintain a daughter-in-law. 1 *Strange's Rep.* 10.

And the justices have no power to order the overseers to pay any money, but for the relief of the poor; they therefore cannot order them to pay money to a surgeon or to a nurse for attending a pauper. In the *K.* v. *Smith and another, Hil.* 10 *Geo.* 1.—The defendants were indicted, as overseers of the poor, for not paying a sum of money to a surgeon who had taken care of a pauper, pursuant to an order of a justice of the peace. It was moved to quash this indictment, because it was an order made relating to a matter out of the jurisdiction of the justices, it having no relation to the relief of the poor. And for this reason the indictment was quashed. 1 *Bott, Const's ed.* 355.

Can only be made for relief of the poor.

So in the *K.* v. *Woodsterston, Mich.* 6 *Geo.* 2, an order was made by two justices upon the overseer for paying five pounds to a woman for her attendance in nursing a poor inhabitant of that town when he was in gaol; and likewise for paying a surgeon's bill, that was due on account of the said pauper; which order had been confirmed at the sessions.—It was moved

to quash this order upon several exceptions for want of form; but it was particularly objected to the substance of the order, that the justices have only power to order parish officers to relieve a poor inhabitant, where it is fit he ought to be relieved. But in the present case the parish officers have actually given the party relief; they employed a surgeon and a nurse to take care of him. The *surgeon* and *nurse* have a proper remedy by way of action against the officers; and the justices have no pretence to interfere in this matter.—THE COURT thought the exceptions for want of form were answered; but as to the exception in point of *substance* in the order, they thought it must be fatal. Order quashed. 2 *Barnard*, 207, 247.

For such persons have a remedy by action against the officers by whom they were employed. 2 *Barnard*, 207, 247.

When relief payable.

And it has been determined, where an order of relief was to pay unto the person in whose favour it was made, the sum of one shilling and six-pence *weekly and every* week, that the sum thus ordered to be paid was due at the beginning of the week. This was determined in the *K.* v. *John Fearnly*, *Tr.* 26 *Geo.* 3. Upon a demurrer to an indictment against the defendant for disobeying an order of two justices for the payment of the above sum to a pauper for the maintenance of herself and her bastard child, it was among other things objected, that as the money was ordered to be paid weekly, the defendant could not be guilty of any disobedience before the expiration of the week; but THE COURT were of opinion, that the sum which was ordered to be paid *weekly*, was due at the beginning of the week.—The indictment however was held to be bad upon another point. 1 *Term Rep.* 316.

Sessions cannot make an order on overseers to relieve a person who has refused to go into the poor-house.

If a pauper wanting relief, refuses to go into the poor-house, the overseers may refuse the payment of any allowance that may be ordered by the justices;—this was determined in the *K.* v. *Carlisle*, *Mic.* 7 *Geo.* 3. This was an indictment tried before *Bathurst* J. at *Carlisle*. The case was, one *Jane Carr*, having been delivered of two bastard children, was with her children taken into the poor-house of the parish of *St. Mary* in *Carlisle*, and maintained there for a year and a half; when upon an allowance of one shilling a-week, she agreed with the parish officers to leave the poor-house and take her children with her, which she did accordingly. After six months they refused to continue the payment, but *offered to take her and her children again into the poor-house. This she refused to submit to*; but offered to take care of one child herself, if the parish officers would take care of the other. This not being complied with, *she offered to take sixpence a-week for the maintenance of herself and children*; but the parish officers persisted in refusing her any relief, unless she came into the poor-house. Upon this she applied to the court of quarter-sessions for the county of *Cumberland*, where an order was

made upon the churchwardens and overseers to pay her one shilling a-week towards the maintenance of herself and children until further order. This order he served upon the defendant, one of the overseers, and demanded payment; which he refused, but offered to take her and her children into the poor-house.—*Bathurst* J. thinking it a matter of importance, said, he would mention it to all the judges, without any expence to the parties. His report of the opinion of the judges, which he made in the ensuing *Michaelmas Term*, was in these words: "That they were all of opinion, upon considering "the statute of 9 *Geo.* 1. *c.* 7. that the defendant was justi-"fied in refusing the woman her allowance." *Caldecot*, 76. 1 *Bott*, *Const's ed.* 358.

And such person only for whom the relief is required, is obliged to go into the poor-house.

It was long doubted, whether persons applying to the parish for relief for their infant children, *but not for themselves*, were intitled to such relief if they refused to go into the poor-house. But it is now settled, that the person only for whom the relief is asked, is obliged to go into the work-house under statute 9 *Geo.* 1. *c.* 7.

The following are the cases where this question occurred:

In the *K.* v. *North Shields*, a justice of the peace made an order upon the churchwardens and overseers of the township of *North Shields*, to pay the sum of two shillings and sixpence weekly unto a woman, *for and towards the support of her three children, one aged six years, one three, and one fourteen months*; the sessions *on appeal* confirmed this order, and stated a case, the object of which was to obtain the opinion of the court upon a question whether *this woman having refused to go with her said three children to the poor-house*, not having sought relief for herself, nor there being any order for her, was entitled to the relief ordered? and it was stated that the sessions were of opinion, that these children, being nurse children, ought not to be separated from their mother, and that *the mother, not seeking relief* HERSELF, *was not compellable to go into the work-house.*—In support of the order of sessions it was principally contended, that as the mother had not here asked relief for herself, this could not be considered as the case of a person refusing to go into the parish work-house, and that this case was distinguishable from the *K.* v. *Carlisle*, which had been cited and relied on on the other side, for there the relief applied for, received and ordered, was in part personal, being *for the mother as well as the children*;—this case was however decided upon another point*. But as to the principal question, *Willes* J. inclined to the distinction taken at the bar between this case and that of *K.* v. *Carlisle*.—*Ashhurst* J. doubted whether they were not bound

* The order of sessions was quashed upon the ground that they had no appellate jurisdiction. See p. 802 supra.

by the act. A parent is obliged to maintain her family in the first instance: if she become unable, she may receive relief; but if she do, and the family at the time were living under the roof and protection of the mother, the relief must be taken as extended to them all; and every poor-house has accommodations for children: if considered otherwise, it would be attended with mischievous consequences. Suppose an idle artificer was to throw all his family upon the parish, and say, "I'll only earn sufficient for myself," how under the construction insisted upon is this mischief to be prevented? The object of the act was to make an useful and necessary body of men uniformly industrious. *Buller* J. was not satisfied that they were bound by the act, as said to be expounded in the *K.* v. *Carlisle;* but thought that the statute, in its true construction, is confined to such poor persons for whom the relief is ordered; and therefore, that the distinction between that and the present was well founded. The act professes to be made "for the greater ease of parishes in relief of the poor." Now the very great reverse of this must be the case, if a parish is obliged to find accommodation for a numerous family, when an individual only of that family wants relief. The act does not expressly say, that any one, except the individual who wants relief, is bound either to go into the poor-house or to work, and infants of the tender years stated in this case are not capable of discretion, and consequently not the objects of compulsion, either as to their going into the poor-house, or their working when taken there. That this construction will not be productive of any mischievous consequences, or promote idleness amongst artificers and manufacturers; for where the parent is able to maintain his family by his labour but refuses to do it, he may be compelled to work, and be punished as an example. *Caldecot's Cas.* 68.

The point was however finally determined in the case of the *K.* v. *Haigh and another, Ea.* 30 *Geo.* 3.—The defendants (being churchwarden and overseer) were indicted for disobeying an order of a justice, for the payment of a weekly sum to a woman *for the maintenance of her bastard child.* At the trial before *Buller* J. at the assizes, it appeared that *the mother applied for relief for her child only;* and the question was, Whether the defendants were bound to obey the order, as the mother of the child refused to go into the work-house? A verdict was taken for the prosecutor, subject however to be set aside, and to have a verdict of acquittal entered, in case the court should be of opinion, that under these circumstances the defendants were not bound to obey the order. In support of the prosecution, the opinions of *Willes* and *Buller* Justices, in the *K.* v. *North Shields* were relied on as decisive. Against this prosecution, the case of the *K.* v. *Carlisle* was mentioned, where all the judges were of opinion, that the mother's refusal to go

into the work-house, justified the parish officers in refusing payment of the sum ordered. And it was contended that if this question had not been so determined, the inconveniences attending a contrary decision ought to be considered; for in such a case the parents themselves would be idle, while the children were maintained at the expence of the parish. That it was the object of the legislature throughout the whole system of the poor laws to give authority to the parish officers over the whole of a family, when any of them are unable to support themselves; and under the words "*poor persons*" are comprehended all the constituent and dependent parts of a family; for when relief is administered to a child, it is in effect given to the parent. But by lord *Kenyon*, Ch. J. The only question is, For whom was the relief asked? for such person only is, according to the terms of this act of parliament, to be sent to the work-house. It is stated that the *child* only wanted relief; the application was indeed made by the mother, but it was not on her own account, but for her child only, who was of too tender an age to apply herself. This is therefore very distinguishable from the case of the *K.* v. *Carlisle*, where the relief was asked both for the parent and the child. It would be extremely hard, and contrary to the spirit and words of this act of parliament, if when all the children of a family (except one) were capable of supporting themselves, and that one was unable, either from the want of reason or of the use of its limbs, to maintain itself, and were under the necessity of receiving relief, the whole family were to be sent to the work-house. Such a law would not only be repugnant to all ideas of mercy and humanity, but would also be prejudicial to the interest of the parish, who would in some measure be deprived of the benefit of the labour of such of the family as were able to work; for they could earn much more out of the work-house than in it.—Judgment for the prosecutor. 3 *Term Rep.* 637.

### *IV. Overseers Accounts.*

At what time parish officers shall make up their accounts.

By 17 *Geo.* 2. *c.* 38*, "the churchwardens and overseers 'shall yearly, within fourteen days after other overseers shall 'be appointed, deliver in to such succeeding overseers a just 'account in writing, fairly entered in a book to be kept for that

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* The stat. 43 *Eliz. c.* 2, in regard to the overseers accounts, seems to be in a great measure superseded by the provisions in the above stat. of the 17 *Geo.* 2. It may not however be improper to insert in this place, the clauses in the stat. 43 *Eliz.* relating to this matter.—"And it was enacted by 43 *Eliz. c.* 2, that the churchwardens and

'purpose, and signed by them, of all sums by them received, or 'rated and not received; and also of all goods, chattels, stocks 'and materials in their hands, or in the hands of any of the 'poor to be wrought, and of all monies paid by such church-'wardens and overseers so accounting, and of all other things 'concerning the said office.' *s.* 1.

Overseers shall pay over the balance to the succeeding overseers.

'And shall also pay and deliver over all money, goods, and 'other things in their hands, to the succeeding overseers; 'which account shall be verified by oath, or affirmation before 'one justice, who is to sign and attest the caption of the same, 'at the foot of the account, without fee.' *s.* 1.

Book may be inspected, paying sixpence; and copies taken, paying sixpence for 300 words.

'And the said book shall be preserved by the churchwardens 'and overseers in some public or other place, in every parish 'or township; and they shall permit any person assessed, or 'liable to be assessed, to inspect the same at all seasonable 'times, paying 6*d.* for such inspection; and shall, upon de-'mand, forthwith give copies, at the rate of 6*d.* for every 'three hundred words, and in proportion for any greater or 'less number.' *s.* 1.

Penalty on parish officers not accounting as the act directs.

'And if they shall refuse or neglect to make and yield up 'such account, verified as aforesaid, within the time limited, 'or shall refuse or neglect to pay and deliver over such money 'and other things in their hands, any two justices may commit 'them to the common gaol, until they shall have given such ac-'count, or shall have paid and yielded up such monies and other 'things as aforesaid.' *s.* 2.

Overseer removing shall deliver his accounts to the churchwarden.

'And if any overseer shall remove, he shall, before such re-'moval, deliver over to some churchwarden or other overseer, 'his accounts verified as aforesaid, with all rates, books, papers,

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"overseers shall, within four days after the end of their year, and after "other overseers nominated, make and yield up to two justices (1 *Qu.*) "true accounts of all sums received, or rated and assessed and not "received, and also of such stock as shall be in their hands, or in "the hands of any of the poor to work, and of all other things con-"cerning their office; and such money as shall be in their hands shall "pay over to the new churchwardens and overseers. *s.* 2.

"And the subsequent churchwardens and overseers, by warrant "from two such justices, may levy by distress and sale of the offenders "goods, the money or stock which shall be behind upon any account "so made; and in defect of such distress, such two justices may com-"mit him or them to the common gaol, there to remain until pay-"ment of the said sum and stock. *s.* 4.

"And it shall be lawful for such two justices to commit to the "said prison every one of the said churchwardens and overseers "which shall refuse to account, there to remain without bail or "mainprize until he have made a true account, and satisfied and "paid so much as upon the said account shall be remaining in his "hands." *s.* 4.

'money, and other things concerning his office, under the like 'penalties.' *s.* 3.

Executors of overseers to account in forty days.

'If any overseer shall die before the expiration of his 'office, his executors or administrators shall, within forty 'days after his decease, deliver over all things concerning his 'office to some churchwarden or other overseer, and shall pay 'out of the assets all sums of money remaining due, which he 'received by virtue of his office, before any of his other debts 'are paid.' *s.* 3.

Succeeding overseers to levy arrears.

'And in case any person shall refuse or neglect to pay any 'sum that he shall be rated at, the succeeding overseers are to 'levy such arrears, and thereout reimburse their predecessors, 'all money which they have expended for the use of the poor, 'and which are allowed to be due to them in their accounts.' *s.* 11.

The justices of peace have only power over overseers accounts, and not over those of the churchwardens*; although the office of overseer is annexed to that of churchwarden; for in the case of the *K.* v. *Pecke*, *Mic.* 14 *Car.* 3. a churchwarden being committed for refusing to account for all monies received and disbursed by him, and of all such things as concerned his office, was upon a *habeas corpus* discharged; for if he be committed as overseer, it must be so expressed in the *mittimus*, although the office of *overseer* be annexed to that of *churchwarden*, for the justices have no power over him as a churchwarden. 1 *Keble*, 579.

And where overseers are committed for not accounting, the warrant of commitment must conclude, 'there to remain until 'they shall account; and *not* until they be duly discharged ac'cording to law,' or the like; for there is a difference in the cases where a man is committed as *criminal*, or for *contumacy* in refusing, as in this case, to do a thing required. In the first case, the commitment must be, 'until discharged according to 'law;' but in the latter case 'until he comply and do the 'thing required of him;' for in that case he shall not lie till the sessions, but shall be discharged on performing his duty. *Carthew*, 152.

But it seems that if the overseer produce an account, though it be only an account in gross of his receipts and payments, and he refuse to give a particular account, or to produce his books, yet the justices have no authority to commit; for if they object to the account, they ought to hear it, strike out what is amiss, and balance the account. *K.* v. *Carroche*, *Shower's Rep.* 395, and *Walrond's Case*, 1 *Bott*, *Const's ed.* 260.

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* See title CHURCHWARDENS.

And a mandamus to swear an overseer to his accounts, according to stat. 17 *Geo.* 2. *c.* 38, will be granted of course; for in the case of the *K.* v. *the Justices of Middlesex, Hil.* 19 *Geo.* 2. a mandamus was moved for, to compel the justices to swear an overseer to the truth of the accounts which he had delivered in; and it was objected, that when he had delivered in his account, it consisted of gross sums, that the justices asked him some questions touching the particulars, which he refused to answer, and therefore they refused to swear him to his account.—But by *Wright* J. This motion is founded on the stat. 17 *Geo.* 2. *c.* 38. which requires the justices to do a thing, which they have refused to do. We cannot refuse to grant the mandamus, for it is a motion of course.—*Dennison* and *Foster* justices, of the same opinion, that it was a motion of course; mandamus granted. 1 *Wils.* 125.

So also the court will grant a mandamus to oblige the old overseer of the poor to deliver over the books of the poor's rates to the new overseers: for they are public books, and ought to be delivered over by one overseer to another, that all the parishioners may have access to them; and the overseer and churchwarden for the time being ought to have the custody thereof. *K.* v. *Clapham*, 1 *Wils.* 305.

But as the accounts of an overseer of the poor are by the statute directed to be settled at the end of the year; if a person be appointed an overseer for four successive years, and do not make any rate in the three first, to reimburse himself what he expends in those years, he cannot in the fourth year make a rate for that purpose. The court of *King's Bench* were clearly of this opinion in the case of the *K.* v. *Goodcheap, Hil. Ter.* 36 *Geo.* 3, which was as follows: A person appealed to the *Cambridgshire* sessions, against the defendant's accounts as overseer of the poor; the sessions amended the account, and stated a case for the opinion of the court, in substance this:—At *Easter* 1788, the defendant was duly appointed an overseer; at *Easter* in the several years 1789, 1790, and 1791, he was again appointed one of the overseers of the parish, and continued in the office those four successive years. At *Easter* 1792, two other persons were appointed overseers, but one of them becoming insolvent about three weeks after his appointment, the defendant was again appointed in his room for the remainder of the year, ending at *Easter* 1793. 'During the 'four first years, beginning at *Easter* 1788, and ending at '*Easter* 1792, the defendant did not make out any account as 'overseer, or at any time after the expiration of any of those 'years, pursuant to the statute; but at the expiration of the 'last year, ending at *Easter* 1793, he made out one general 'account, as overseer, for the four successive years, ending at '*Easter* 1792, and for that part of the year in which he served

'the office ending at *Easter* 1793;' which account was allowed by two justices, and upon that allowance a balance of 9*l.* 1*s.* appeared to be due to the defendant. An appeal was lodged at the *Midsummer* sessions 1793, being the next sessions after the allowance of that account, and was adjourned to *Michaelmas* sessions following. During the four years ending at *Easter* 1792, the defendant expended the sum of 232*l.* 0*s.* 9½*d.* for the use of the poor, and was not reimbursed the same, nor any part thereof. Four rates were made for the relief of the poor, previous to *Easter* 1792; but neither of them were collected, three being quashed on appeals, and the fourth being informal. 'After the defendant was appointed an overseer for 'the part of the year ending at *Easter* 1793, two rates for the 'relief of the poor were made and collected by him, out of which 'he reimbursed himself the money he expended for the four 'successive years ending at *Easter* 1792,' and the remainder of the year ending at *Easter* 1793, by charging the same in the account appealed to. If the defendant was entitled to reimburse himself the sums expended in the four successive years ending at *Easter* 1792, there was due to him the sum of 5*l.* 2*s.* 11½*d.* If, on the contrary, he was not intitled to reimburse himself such sums, there would be a balance due from him, after allowing him the expences of the year ending at *Easter* 1793, of 219*l.* 0*s.* 4d. THE SESSIONS 'determined the 'defendant could not legally insert in his account the ex- 'pences of the successive years ending at *Easter* 1792, but on- 'ly the expences of the time when he was in office, in the year 'ending at *Easter* 1793, and they ordered the account to be 'amended accordingly.' When the case was first brought up, the court recommended it to the parish to settle the accounts by an agreement with all the parties concerned; but some of the parishioners still persisting to take the opinion of the court, it was again brought forward. By lord *Kenyon* Ch. J. When the case was first brought before the court, we thought it too clear for discussion, and wished that the parish would agree to settle the account, as it would otherwise bear hard upon the defendant; for as to the question of law, it is impossible to raise a doubt about it; the overseers ought not to include in their accounts charges for several years, but all the items of the accounts should be confined to that year when the accounts are directed by the act to be passed; otherwise as the inhabitants of a parish are a fluctuating body, the present inhabitants would be burdened with the expences of their predecessors.—BY THE COURT, order of sessions confirmed. 6 *Term Rep.* 159.

By 17 *Geo.* 2. *c.* 38, 'if any person shall find himself aggrieved by, or have any material objection to such account as 'aforesaid, or any part thereof, or shall find himself aggrieved 'by any neglect, act, or thing done or omitted by the church- 'wardens, overseers or justices, such person giving reasonable

Persons aggrieved or having objection to overseers accounts, may appeal.

'notice to the churchwardens or overseers, may appeal to the 'next general or quarter sessions * for the county, riding, division, corporation or franchise; and the justices there assembled 'shall receive such appeal, and hear and finally determine the 'same.' *s.* 4.

'But if it appear to the said justices that reasonable notice 'was not given, then they shall adjourn the said appeal to the 'next quarter sessions, and then and there finally hear and determine the same.' *Ibid.*

And the justices may, on such appeal, award costs.

'And the justices may award to the party for whom such 'appeal shall be determined, costs, in the same manner as 'in appeals concerning settlements, by 8 & 9 *Will.* 3. *c.* 30. '*Ibid.*

Persons living in corporations where there are not four justices may appeal to the county sessions.

'And in all corporations or franchises which have not 'four justices, persons may appeal, if they think fit, to the 'next general or quarter sessions of the county, riding, or division.' *s.* 5.

Overseers accounts must be allowed by justices out of sessions before the sessions can entertain an appeal.

The sessions have no jurisdiction in regard to overseers accounts, until they have been allowed by justices out of sessions: for in the case of the *K.* v. *Bartlett*, *Tr.* 7 *Geo.* 2.—An order made at sessions relating to accounts of overseers of the poor, was moved to be quashed, because it did not appear that the accounts had been before two justices, (1 Qu.) and they cannot come *per saltum* to the sessions. On the other side it was said, that it appeared there was an allowance; for the appeal is said to be against the disbursements and *the allowance* thereof, which the court will presume was regular. But by the court—It does not follow that this was an allowance by two justices, for the parish might do it; and therefore, for want of jurisdiction this order must be quashed. 2 *Strange*, 983.

So in the *K.* v. *Whitear and others, Mich.* 3 *Geo.* 3—An original order was made at the quarter sessions, purporting to be an order made upon the appeal of the present overseers, directing the late overseers to pay over to the present, the balance of their accounts, which accounts were settled and balanced by the said order of sessions. Exception was taken to the jurisdiction of the sessions to make such an order, in the first instance, without any previous application having been made by two justices, pursuant to the directions of 43 *Eliz. c.* 2. To this it was answered by the counsel who attempted to support the order, that this order was not made upon the 43 *Eliz. c.* 2. but upon the 17 *Geo.* 2. *c.* 38. But to this it was replied, that

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* See p. 711. 712. supra, for a general construction on this clause, in regard to its repealing the stat. 43 *Eliz*, *c.* 2. in respect of the mode of appealing.

the statute of 17 *Geo.* 2. *c.* 38, does not give power to apply to the sessions *per saltum** to make such an order as this. THE COURT was of the same opinion, and that the 17 *Geo.* 2. *c.* 38. made no alteration in this respect.—The order was quashed. 3 *Burrow's Rep.* 1365. 1 *Black. Rep.* 395.

Proceedings on appeal.

And upon an appeal from the allowance of overseers accounts, the justices at the sessions, if they see reason, may disallow the accounts of the overseers, and order them to pay a certain sum over, which they judge to be in their hands; but if they refuse to do so, they cannot under the stat. 43 *Eliz. c.* 2. *s.* 4.† imprison them directly, but must, agreeably thereto, levy the arrears by distress and sale, and in default of distress commit them; for the justices in sessions must execute their judgment in the same manner as the two justices must do. *Q.* v. *Hedges*, *Mich.* 4 *Ann.* 3 *Salk.* 533.

After appeal two justices out of sessions may enforce payment of the balance of overseers accounts.

Also after the appeal is heard and determined, two justices out of sessions may enforce the payment of the balance, according to the stat. 17 *Geo.* 2. *c.* 38. *s.* 2. (see p. 808 supra) and if they refuse to enforce payment, they may be compelled thereto by a mandamus; this was determined in the *K.* v. *Sir John Carter and others*, *Ea.* 31 *Geo.* 3.—On an appeal against the allowance of the accounts of an overseer, the sessions disallowed several items, but the order of sessions did not proceed to direct him to pay the amount thereof over to the succeeding overseers. On his subsequent refusal to pay over this sum, an application was made to two magistrates, desiring them to enforce payment: but they conceiving they had no authority to act, declined to interfere; whereupon a rule was obtained requiring them to shew cause why a *mandamus* should not issue to compel them, or any two of them, to receive and proceed on the complaint against the overseer for refusing to pay over the balance in his hands. Against this it was contended, that the power of the magistrates is confined to cases where there is no appeal. But the prosecutor chose to appeal to the sessions; and therefore he should pursue that remedy by sessions process. And these magistrates, acting out of the sessions, having no power under the statutes to compel the payment of the balance of this account.—But by lord *Kenyon* Ch. J. It seems to me that these justices have jurisdiction in this

* The allowance of such accounts by this statute, is to be by one justice, see p. 807, 808 supra.

† See 43 *Eliz. c.* 2. *s.* 2. 4, in note in p. 807, 808 supra: and note, that under that statute, the power of the justices to commit in the first instance, was only for refusing to account; but now by 17 Geo. 2. c. 48. s. 4. (see p. 807, 808 supra) an overseer may be committed in the first instance by two justices, whether it be 'for not paying over 'the balance of his accounts; or for refusing to account.'

case. The effect of the appeal was the ascertaining the *quantum* of the arrears, and then the statute attaches, and enables the magistrates out of sessions to enforce the payment of the balance.—*Ashhurst* J. and *Buller* J. absent. *Grose* J. These are as much arrears now as they were before the appeal; only the *quantum* is ascertained. Rule absolute. 4 *Term Rep.* 246.

And the balance must be paid without deduction.

And the balance of the account of former overseers, must be paid over to the succeeding overseers, notwithstanding the vestry may be willing and may have made an order to let them retain it to pay a bill, for which they have engaged to answer; for the statute says, the balance shall be paid over to the new overseers under a penalty, and it is not in the power of the vestry to dispense with the statute. 2 *Strange*, 992.

Overseer cannot charge the parish with the salary of an assistant.

And the overseers cannot take credit in their accounts for money paid as a salary to *an assistant overseer*, although such assistant overseer be appointed, and the salary fixed by the consent of the parish; this was determined in the *K.* v. *Welch and others*, *Hil.* 28 *Geo.* 3.—Two justices allowed the accounts of the late overseers, and the sessions on appeal confirmed such allowance, stating a case, whereby it appeared, that, at a vestry held pursuant to public notice, the persons present agreed, that a person should be appointed to assist the churchwardens and overseers in their office, at the salary of 20*l.* to be paid out of the poor rates; that a person was by the majority of persons present, accordingly appointed to be such assistant, and 'the overseers had in their accounts taken credit for 20*l.* as 'paid by them to that person for a year's salary.'—Against this order it was contended, that the statute 43 *Eliz.* c. 2. has provided for the appointment of overseers, and the vestry have nothing to do with them or their accounts. That the purpose of the statute in requiring that they shall be *substantial householders*, was not merely to secure the money raised, but also to throw the burthen of the office on those who are able to bear it. That the poorer part of the parish are exempted from this burden; but if this order be supported, it will be thrown upon them indirectly, as the salary is to be paid out of the *poor rates* that if three overseers are not sufficient, four might be appointed.—Lord *Mansfield*. It is a hard case upon these officers who have paid the money by the direction of the parish, and no fraud or contrivance imputed; but 'I cannot make it a legal 'act.' It is a great burthen; but the statute meant to throw it on the overseers, and that they should do it without fee or reward. Orders quashed. *Bott*, *Const's ed.* 278. *Caldecot's Cases*, 504.

One overseer to reimburse another if he has money in hand.

But one overseer may be ordered to reimburse another if he hath money in hand already raised; this was done in the *K.* v. *Limehouse*, *Ea.* 1 *Geo.* 1.—There was a custom in that parish

for the churchwardens to pay the casual poor, as they called them, and the overseers of the poor the pensioners. The churchwardens were 60*l*. out of pocket at the end of the year, and the sessions, finding that the overseers had enough of the public money already raised to pay the churchwardens, ordered them to be reimbursed. Objection was made to this order, that at the end of the year the officer cannot be reimbursed, for that no rate can be made to reimburse him. BY THE COURT.—Here the money was raised already, and the order was no more than one officer should pay to another. Let the order be affirmed. *Foley*, 22.

And if an overseer becomes a bankrupt before the expiration of his office, the money previously received by him is not such a debt as can be proved on the behalf of the parish under the commission, for in the *K.* v. *Egginton, Tr.* 26 *Geo.* 3.—The case was as follows: The defendant had received as overseer of the poor four pounds previous to his bankruptcy, which was on the fifth of *December* 1785; but his accounts were not made out till the *Easter* following; and he had afterwards been committed to *Worcester* gaol by two justices, for not paying over the four pounds as the balance of his accounts. The defendant had obtained his certificate; and the court granted a rule to shew cause why he should not be discharged out of custody: on shewing cause it was contended, that as the defendant was not compellable to give in his accounts till fourteen days after *Easter*, this sum which he had received in his character as overseer was not a 'debt due at the time when the act of bankruptcy was committed,' viz. in *December* 1785, and that therefore it was not a debt capable of being proved under the commission.—And by lord *Mansfield* Ch. J. This money was deposited in the defendant's hands for the use of the parish, which they had no right to call for till a fortnight after *Easter* 1786; therefore till that time he was entitled to retain it. But this debt only arises upon the defendant's conversion of it to his own use, which is not till after the bankruptcy. Therefore the defendant is not entitled to be discharged.—*Buller* J. This motion can only be sustained on the ground, that the parishioners had a cause of action against the defendant before his bankruptcy: but at that time they could not have sued him for this debt. And even if this sum had been kept by itself, the bankrupt's assignees could not have touched it. The defendant was a mere trustee for the parish; and I cannot think that his bankruptcy discharged him from his office of overseer.—Rule discharged. 1 *Term Rep.* 369.

Overseers becoming bankrupt.

### *V. Indemnity of overseers in the due execution of their office.*

'By 43 Eliz. c. 2, if any action of *trespass*, or other suit, In actions

against overseers they may plead generally or specially.

'shall be brought against any person for any thing done by authority of this act, the defendant may either plead *not guilty*, or make *avowry*, *cognizance*, or *justification* for the taking of the distresses, making of sale, or other thing done by virtue of this act, alleging, that the thing, whereof the plaintiff complained, was done by authority of this act, without expressing any other matter. To which the plaintiff may reply, That the defendant did the act of his own wrong, without any such cause alleged by the said defendant. And after such issue tried for the defendant, or nonsuit of the plaintiff after appearance, the same defendant to recover *treble* damages, with his *costs* and that to be assessed by the same jury, or writ to inquire of the damages.' *s.* 19.

Treble damages for the defendant, and his costs.

Upon this statute it hath been resolved, That the damages by reason of the vexation shall be assessed by the jury, and trebled by the court, and that the court upon that may give costs; for no evidence respecting costs can properly be given to a jury, inasmuch as they depend upon the usage of the court in which the action is brought. 1 *Yelv.* 176.

Yet if the treble damages be assessed by the jury, it will be well, although it be not done by the court; because the words are "to be assessed by the same jury." 1 *Yelv.* 176.

But the costs shall not be trebled, but only the damages. 1 *Yelv.* 179.

It seems also to be settled, that if the plaintiff be nonsuited, or if there be a verdict for the defendant, and the jury impanelled to try the issue omit to assess the damages, the court may award a writ of inquiry; for though the jury so impanelled may assess the damages, yet this is only an inquest of office, and no part of the issue, and it is a rule that where the court ought *ex officio* to inquire of a matter, and this be omitted such omission may be supplied by a writ of inquiry. 1 *Roll's Rep.* 172. *Carthew*, 362. 5 *Mod. Rep.* 118. 1 *Salk.* 205. 1 *Ld. Raym.* 59. *Sayer's Law of Dam.* 126, 127, 145.

But the application for the writ of inquiry must be made before judgment is entered up, otherwise it will be too late; and there must be, as a foundation for awarding the writ, *a suggestion* entered upon THE POSTEA, that the defendant was an OVERSEER OF THE POOR; and that the action was brought against him for a thing done by virtue of the 43 *Eliz.* c. 2. *Sayer's Law of Dam.* 127, 145. 1 *Bott, Const's Ed.* 289.

Overseers may plead the general issue, and give the special matter in evidence.

'Also by 7 *Jac.* 1. *c.* 5, if any action shall be brought against any justice of peace, mayor or bailiff of any city or town corporate, headborough or constable (or against any churchwardens, or persons called *sworn men* executing the office of churchwarden, or any *overseers of the poor*, or others, which in their aid and assistance, or by their commandment, shall do any thing concerning their office, 21 *Jac.* 1. *c.* 13. *s.* 3, 5), every

'such person may plead the general issue, not guilty, and give 'the special matter in evidence. And if the verdict shall pass 'with him, or the plaintiff become nonsuit, the judge before 'whom the matter shall be tried, shall by virtue of this act al-'low unto the defendant *double costs*.'

The officer, in order to be intitled to *double costs* under these acts, must at the time of the trial apply for, and obtain from the judge, a certificate that the action was brought against him for something done in the execution of his office. 2 *Vent.* 45. *Buller's N. P. 8vo. ed.* 332. 1 *Doug. 8vo. ed.* 307.

For to intitle the party to these double costs, it must be certified by the *judge who tried the cause*, that he was acting in the execution of his office; and if no application is made to the judge at the time of the trial for such certificate, the court above will not *afterwards* direct any suggestion that he was so acting to be entered on the roll. 1 *Doug. 8vo. ed.* 307.

But where there is a special verdict, and it appears by the facts found, that the act for which the action was brought was done by the defendant by virtue or reason of his office, the master must tax double costs, though there has been no certificate, nor allowance by the judge who tried the cause: for though in common cases, where it does not appear upon the record in what capacity the defendant was acting, an allowance by the judge is necessary; yet when it does appear on the face of the record that he was acting by virtue of his office, it is otherwise. 1 *Doug. 8vo. ed.* 308.

It hath also been resolved, that the above statutes, giving double costs, do not extend to churchwardens for acts done in regard to ecclesiastical matters; for in the case of *Kuchwail* v. *Smith and others*, *Mich.* 8 *Car.* 1.—an action on the case was brought against the churchwardens for a malicious presentment of the plaintiff for incontinency. Upon not guilty a verdict was found for the defendants: and it was moved that they might have *double costs*, because they were troubled and vexed for a matter which did concern their office.—But IT WAS RESOLVED, that this case was not within the statute, for it is merely ecclesiastical; and the makers of the statute never intended to give double costs but where men are vexed concerning temporal matters, which they shall do by virtue of their office, and not for presentments concerning matters of fame. *Cro. Car.* 285.

No action to be brought against overseers acting under a justice's warrant until demand made of the copy of the warrant and refusal.

And by 34 *Geo.* 2. c. 41, 'No action shall be brought 'against any constable, headborough, or other officer, or any 'person acting in his aid, for any thing done in obedience to 'any warrant of any justice of the peace, until demand hath 'been made or left at the usual place of his abode by the par-'ty, or his attorney, in writing, signed by the party demanding 'the same, of the perusal and copy of such warrant, and the

'same hath been refused or neglected for six days after such 'demand: and if after compliance therewith, any action shall 'be brought, without making the justice defendant, or produc- 'ing and proving such warrant at the trial, the jury shall give 'their verdict for the defendant, notwithstanding any defect 'of jurisdiction in such justice: and if such action be brought 'jointly against such justice, and such officer or person acting 'in his aid, then on proof of such warrant the jury shall find 'for such officer, or person so acting, notwithstanding such 'defect of jurisdiction as aforesaid; and if the verdict shall be 'given against the justice, the plaintiff shall recover his costs 'against him, to be taxed in such manner, as to include such 'costs as such plaintiff is liable to pay to such defendant for 'whom such verdict shall be found as aforesaid. *s.* 6.

Where the judge shall certify the cause of action was wilfully committed, plaintiff to recover double costs.

'And where the plaintiff in such action against any justice 'shall obtain a verdict, if the judge before whom the cause shall 'be tried, shall in open court certify on the back of the re- 'cord, that the injury was wilfully and maliciously commit- 'ted, the plaintiff shall have double costs. *s.* 7.

Limitation of actions.

'But no action shall be brought against any justice or other 'officer, or person acting as aforesaid, unless commenced with- 'in *six calendar* months after the act committed.' *s.* 8.

It hath been determined that an overseer of the poor, who distrains for a poor's rate under a justice's warrant, is an officer within the protection of this statute, and ought not to be proceeded against without demand and perusal of the warrant.—For by lord *Mansfield*, *Overseers of the poor* and churchwardens are clearly within the meaning and protection of this statute: the legislature, by passing this act, intended to extend the benefit of the statute of 21 *Jac.* 1. *c.* 12.; and therefore all officers acting under a justice's warrant are included in it. *Nutting* v. *Jackson*, *Ea.* 13 *Geo.* 3. *Buller's N. P.* 8*vo. ed.* 24. *Lofft's Rep.* 249.

So also, in the case of *Harper* v. *Carr*, Ea. 37 *Geo.* 3. B. R. which was trespass for seizing and carrying away a ship's anchor at Liverpool. It appeared at the trial, before *Rooke*, J. that the defendant, who was a church-warden, took an anchor as a distress for non-payment of a poor-rate, under a warrant of magistrates, which was produced; it was then contended, on behalf of the defendant, that this action could not be maintained against him alone, but that the magistrates, under whose authority he had acted, ought also to have been made defendants, under the stat. 24 *Geo.* 2. c. 44, which restricts the manner of bringing an action against any CONSTABLE, HEADBOROUGH, OR OTHER OFFICER, for things done in obedience to the warrant of justices of the peace, *The judge thought, that a churchwarden distraining for a poor's rate, was not within the protection of that statute, and over-ruled the objection.* The defendant then entered upon his defence: and the jury found a verdict for the

plaintiff, under the judge's direction, for the value of the distress, with leave to the defendant to move to enter a non-suit, if the court thought the objection fatal. On the argument, the case of *Nutting* v. *Jackson* was recited and relied upon; By the Court. The act provides that, when a warrant is granted to the inferior descriptions of mankind, who cannot judge of the propriety of it, they shall not be harrassed with actions for executing it, but that the magistrate who granted it shall bear the responsibility himself. It is objected, however, that the statute does not extend to churchwardens and overseers, but is confined to the officers of the peace. But if that be the meaning of the statute, all mankind have been acting under a mistake ever since it passed; for it has always been extended to surveyors of the highways, who have an extensive jurisdiction on the subject of the highways. In *Wilkes* v. Lord *Halifax*, it was indeed decided, that the act did not extend to one of the king's messengers; and there it was said, that it was confined to those who were obliged to take upon them the execution of offices of this description, without any reward: nor can it be doubted but that it extends to overseers of the poor in some instances, as, for example, in executing an order of removal. In the title of one of the acts of parliament (7 *Jac.* 1, *c.* 5.) the description is, "Constables and certain *other his Majesty's officers*." But in this statute the latter expression is dropped, and it speaks of "constables, headboroughs, or other officers," acting in obedience to any justice's warrant. The magistrates who granted the warrant should have been made parties to the suit, and that all other steps should have been taken that the stat. 24 *Geo.* 2. requires.—The rule for entering a non-suit was therefore made absolute. 7 *Ter. Rep.* 270.

## *VI. Punishment of overseers for neglect of duty and misbehaviour.*

By 43 *Eliz.* c. 2, 'the churchwardens and overseers being 'negligent * in their office, or in the execution of the orders 'made by and with the assent of the justices of the peace, or 'any two of them (1 *Qu.*) shall forfeit for every such default 20*s.* 'to be employed to the use of the poor of the parish, and towards 'a stock and habitation for them, and other necessary uses; 'and to be levied by the churchwardens and overseers, or one 'of them †, by warrant from any two justices (1 *Qu.*) or the Forfeiture for neglect of duty.

* It seems that an overseer cannot be adjudged guilty of neglect, until he has had *personal* notice of his appointment. See the case of the *K.* v. *Harman, Ea.* 12 *Geo.* 2. 1 *Bott, Const's ed.* 297.

† If any churchwarden or overseer of the poor be convicted of the penalties inflicted by the above clause, the other must levy it. 16 *Viner's Ab.* 415.

'mayor, alderman, or head officer, of any city or place corporate, 'by distress and sale; or in defect thereof, it shall be lawful for 'any two such justices, &c. to commit the offender to prison till 'the forfeitures be paid.' *s.* 2. 11.

And by 17 *Geo.* 3. *c.* 38, 'If any churchwarden, overseer of 'the poor, or other officer of any parish, township, or place, shall 'neglect to obey the directions of that act, where no penalty is 'provided, or act contrary thereto, he shall for every such of-'fence, on oath thereof made, within two calendar months af-'ter the offence, before any justices, forfeit for the use of the 'poor a sum not exceeding 5*l.* nor less than 20*s.* to be levied 'by distress and sale of the offender's goods, by warrant from 'such justice; which sum shall be paid to some churchwarden 'or overseer of such parish or place. *s.* 14.

Power of justices to fine.

Also by 33 *Geo.* 3. *c.* 55. 'It shall be lawful for two justices, 'at any special or petty sessions, upon complaint upon oath 'of any neglect of duty, or of any disobedience of any law-'ful warrant or order of any justice by any overseer or other 'parish officer, such overseer or other officer having been duly 'summoned to appear and answer such complaint) to impose 'upon conviction any reasonable fine, not exceeding 40*s.* as a 'punishment for such disobedience, or neglect of duty, and by 'warrant under their hands and seals, to direct such fine, if 'not paid, to be levied by distress and sale; and such fine 'shall be applied for the relief of the poor of the parish, 'at the discretion of the justices: and if any person shall 'be aggrieved by the imposition of such fine, or by any order 'or warrant for levying the same, or by the determination 'of the said justices, or by any act to be done in the execution 'of such warrant, he may appeal to the next general or 'quarter sessions, of which appeal ten days notice shall be 'given; and for want of distress, such person shall be com-'mitted to the house of correction for not exceeding ten days. *s.* 1.

'But no person acting under such warrant of distress shall 'be deemed a trespasser *ab initio*, by reason of any irregularity 'or informality in the warrant or proceedings, but the person 'aggrieved may recover special damages in an action.' *s.* 2.

Parishioners may be witnesses.

And by 3 *Will. & Mar.* *c.* 11. 'In all actions to be brought 'for recovery of any money mis-spent or taken by churchwar-'dens or overseers of the poor to their own use, the evidence of 'the parishioners, other than such as receive alms, or any pen-'sion, or gift out of the collections or public monies of the pa-'rish, shall be admitted.' *s.* 12.

Overseers indictable for refusing the office.

If a person appointed overseer refuse to take upon him that office, he may be indicted for his contumacy; for although the statute appoints a penalty, yet that penalty is not for refusing to take the office, but for neglect of duty in that office; and where a statute commands a thing, and appoints no penalty for disobedience, such offence is indictable, as a contempt of the law.—*The K.* v. *Jones, Mich.* 14 *Geo.* 2. 2 *Sess. Cas.* 187. 2 *Strange*, 1146. 1 *Bott, Const's ed.* 298.

And where a person was indicted for not taking upon himself the office of overseer, the court refused to quash the indictment upon certain exceptions taken, and said that the parties might demur to it, if they pleased. *K.* v. *Pardy* and *another*, *Tr.* 7 *Geo.* 3. 1 *Bott*, *Const's ed.* 300.

Refusing to account.

And it hath been determined, that if the overseers refuse to account within the time limited by the statute, for the monies which they have received for the relief of the poor, they may be indicted for such default; for the overseers are required by the act to account, and their refusal is a contempt of the law, for which they may be indicted: and, as to that, there is no difference when a thing is enjoined and when it is prohibited by a statute; for when it is prohibited, the party shall not only have his action for the injury done, but the offender shall be punished at the king's suit for the contempt of the law. It is true, two justices of peace have power to commit the overseers refusing to account, which is a proper mean to come at the right; but it doth not satisfy the king for the contempt. *K.* v. *Cummings and another*, *Hil.* 7 *Will.* 3. 5 *Mod. Rep.* 179.

Or guilty of fraud.

It seems also that if overseers charge the parish with money which they never expended, they may be indicted for the fraud; for in *Moulsworth's Case*, *Tr.* 5 *Will. & Mar.*—An overseer charged the parish with three pounds for putting out an apprentice, and his accounts were allowed by two justices; but in fact the apprentice never was put out. Upon complaint to the sessions, they ordered that the late overseer should repay the money so fraudulently obtained, with costs.—By *Eyre*, J. This order cannot be maintained: the sessions have no jurisdiction; *but there may be another remedy by indictment*. *Comberbach*, 287.

Not relieving the poor, or relieving unnecessarily.

Also if an overseer do not provide for the poor, he is indictable: and if he relieves the poor when there is no necessity for it, it is a misdemeanour.—*Tawney's Case*, 16 *Viner's Abr.* 415.

Overseers fraudulently removing paupers into other parishes.

In the case of the *K.* v. *Bushby*, *Ea.* 5 *Geo.* 2.—The court granted an information against the defendant, who was an overseer, for that he with others had forcibly removed a poor woman, who was very sick and near her time, from one parish to another, to avoid the expense it might occasion to the first parish if the child should be born there. 1 *Bott*, *Const's ed.* 296.

For marrying them to disburthen their own parish.

So in the *K.* v. *Herbert*, *and others*, *Ea.* 32 *Geo.* 2.—An information was granted against the overseers, on affidavits charging them with a *conspiracy*, in procuring a cripple of another parish, to marry a young woman who belonged to their own. 1 *Bott*, *Const's ed.* 300.

Also in the *K.* v. *Tarrant*, *Tr.* 7 *Geo.* 3.—An information was granted against the defendant, for procuring a man to marry a woman who was big with child by another man, to dis-

burthen his own parish, and throw it on the parish to which the husbaud belonged. *Burrow's Rep.* 2106.

But it seems to be now settled, that unless the overseers be in good circumstances, the court will not interpose to punish such offences by the extraordinary course of an information; for in the case of the *K.* v. *Compton and others*, *Hil.* 23 *Geo.* 3, where an information was moved for against the defendants for conspiring to marry a poor woman settled in their parish, then big with child, to a man settled in another, in order thereby to throw the burthen of her maintenance upon the township in which the husband was settled—The Court said that great inconvenience had been felt from the practice of obliging *persons in low circumstances*, to shew cause against informations, and to come afterwards before the court, from perhaps a very remote part of the country, and consequently at a great expence, to receive judgment; that these cases are very fit subjects for prosecution; but that justice may effectually be done otherwise; and it will be more proper in all such cases to take the common remedy, and *proceed by way of indictment.*—Information denied. *Caldecot's Cas.* 246.

### *VII. Relief and ordering of the poor in incorporated districts under stat.* 22 Geo. 3. c. 83.

*So much of* 9 Geo. 1. c. 7. *as repects the maintaining or hiring out the labour of the poor by contract, within any parish which shall adopt the provisions of* 22 Geo. 3. c. 83. *shall be repealed.* 22 Geo. 3. c. 3. s. 1.

And the provisions of the said stat. 22 *Geo.* 3. *c.* 83. are of the following tenor:

Conditions on which parishes shall be entitled to the benefits of the act.

Whenever two third parts in number and value (according to the poor rate) of such of the owners or occupiers of lands, tenements or hereditaments, *within any parish, township, or place, as shall actually attend at a public meeting to be holden in pursuance of the act*, shall, at such public meeting, signify their approbation (I)* of the provisions herein, and their desire to adopt them, and shall at such meeting recommend to the justices, three persons qualified for guardians of the poor, and three for governors of the poor-house, and fix the salaries to be paid to such guardian and governor, and shall procure the consent (II) of two justices to such agreement and salaries, and shall cause such agreement to be registered pursuant to this act; such parish shall be entitled to all the benefits which can arise from this act. 22 *Geo.* 3. *c.* 83. *s.* 3. 33 *Geo.* 3. *c.* 35. *s.* 11.

And where two thirds of the owners or occupiers, within two or more parishes, think fit, with such approbation of two

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* For the forms referred to by these numerals, see the schedule at the end of the present division of this title.

justices, subscribed at the foot of the agreement†, to unite for the purposes of this act, and shall signify their inclination (III) so to do at a public meeting holden in each of such parishes, as before directed concerning a single parish; an agreement (IV) shall, after such meetings, be entered into by the guardians of the poor, which agreement shall be binding;—and every such agreement shall specify the place where such house shall be situate, and the terms upon which such agreement is made, and shall be entered with the clerk of the peace or town-clerk of the county, city, town, or district, in which such parishes shall be situate, and a copy (V) thereof left with him within three calendar months after the making such agreement, for which entry such clerk shall receive one shilling; and from that time every such parish shall be entitled to all the benefits which can arise from this act. 22 *Geo.* 3. c. 83. *s.* 4.

Two or more parishes may unite for the same purposes.

Registering agreements.

But no parish situate more than ten miles from any poor-house or work-house provided under this act, shall be united with the parishes which shall establish such house. *s.* 5.

Parishes more than ten miles distant from the poor-house excluded.

And the notice (VI) for every public meeting shall be given in the parish church or chapel on three successive *Sundays* before the meeting, immediately after divine service, or on such *Sundays* as service shall be performed there; and also fixed in writing on such church or chapel door, or if no church or chapel, at some public place within such parish, where notices of parish business have been usually given, fifteen days before the meeting. *s.* 6.

Notice for meetings.

But no person shall vote at any public meeting, unless he be an owner or occupier, assessed to the poor's rates, after the rate of 5*l. per annum*; nor shall any such person vote as occupier, unless he be assessed to such poor's rates: but in all parishes or places wherein there shall not be ten persons qualified, every person assessed may vote at every such meeting. *s.* 6.

Qualifications of voters.

Two justices of the limit where the poor-house shall be, or be agreed to be situated, shall, upon application to them by two persons who signed such agreement, and upon producing the same to them, appoint (VII) one of the persons recommended, to be guardian of the poor for each parish and place. *s.* 7.

Justices to appoint a guardian for each parish.

But if it shall be the opinion of two thirds in number and value of the owners or occupiers of lands, present at a public meeting called for that purpose, pursuant to notice thereof given in the church or chapel of the parish, on the *Sunday* preceding, that one guardian is insufficient, and the same shall be certified by two or more persons present, in writing under their hands, to two *justices of the peace*, together with the names of four or more persons qualified for the office, the said justices by

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† The approbation of the justices is to be in the same form as precedent II in the schedule infra.

writing under their hands, may appoint so many of the said persons to be guardians as they in their discretion shall think fit, for duly carrying the said act into execution. 41 *Geo.* 3. *Sess.* 1. *c.* 9.

And it shall be lawful for two justices of the district, to whom the expediency of such appointment shall be made appear, by application from two thirds in number and value of the owners and occupiers of lands, qualified by the said act, to appoint a treasurer for the poor-house of such parish, with a salary not exceeding 10*l.* *s.* 3. See *sect.* 12. of 22 *Geo.* 3. *c.* 83 infra.

Duty and powers of the guardians.

And every such guardian shall attend the monthly meetings directed to be holden, and execute the authorities given to guardians by the act,—*and shall have all the powers given to overseers by any other act, and shall, to all intents, except as to making and collecting of rates, be an overseer for the parish for which he shall be appointed guardian, and shall be liable to such forfeitures for neglect of duty as overseers are*— and all notices or applications directed by any act to be given to the overseers, as to the care or removal of the poor, shall be given to the guardian: but in case any such orders shall by mistake be given to the churchwarden or overseer, the same shall be as valid as if given to the guardian; and such churchwarden or overseer shall deliver the same to the guardian, or forfeit 40*s.*—and *where such guardian shall be appointed, neither the churchwardens or overseers shall interfere in the care of the poor*, but shall continue to have the same powers of making and collecting rates as they have at present, and shall be subject to the like penalties for neglect or misbehaviour therein. 22 *Geo.* 3. *c.* 83. *s.* 7.

And it shall be lawful for the guardians of the poor present at such monthly meeting, with the approbation of the visitor who shall sign the same, to make an order on the churchwardens or overseers, or collector of the poor's rate, for so much money as shall be neccessary for the purposes of the said act; and if the churchwardens or overseers, or persons to whom the order shall be directed, shall neglect or refuse to pay the same to the treasurer or guardian within seven days after it shall be demanded, it shall be lawful for any justice of the peace, upon proof on oath of such default, to issue his warrant for levying the said sums by distress and sale of the goods and chattels of the said churchwardens and overseers, or other persons in like manner as by the said act is provided in case of non-payment by the guardians of the poor. *s.* 2.

Churchwardens or overseers to receive the poor's rate, and apply the same as directed by the act.

After the appointment of such guardian, one or more of the churchwardens or overseers shall receive such poor's rate, and apply the same in manner following, *viz.* If such parish shall not be united with any other, they shall pay to the guardian such sums as he shall employ for discharging the bills, and expences attending the house, and the poor belonging to the parish, and shall take receipts from him, expressing the pur-

poses for which the money is wanted; — and if the parish shall be united with any other, they shall pay to the treasurer of such united parishes their quota of the expences attending the poor and poor-house therein, and take his receipts for the same; or, if more convenient, they shall permit such treasurer to draw drafts (VIII) upon him for such money, and pay the same when due, specifying in every receipt and draft the purposes for which it is to be applied; and the accounts, as well of the churchwarden and overseer, as of the guardian, shall be examined at every monthly meeting, and shall be examined and passed quarterly by the visitor of such poor-house, after they shall have been verified upon oath before a justice. 22 *Geo.* 3. c. 83. *s.* 8.

Appointment of a governor of the poor-house.

Also it shall be lawful for two justices of the peace for the limits where the poor-house shall be, upon application made to them as aforesaid, to appoint* one of the persons recommended, for governor of such poor-house—who shall have the care and employment of the poor, and shall be allowed the salary specified in the agreement;—and the visitor of such poor-house, with the consent of the guardians, or the major part of them, or two justices, where a guardian shall be visitor, may remove the governor upon complaint, and proof of misbehaviour or incapacity. *s.* 9.

Appointment of a visitor.

And the guardians *for the parishes united*, shall meet as soon as convenient after such agreement shall have been made, to consider of three persons, respectable in character and fortune, fit to be put in nomination for the office of visitor of such poor-house; and two guardians shall, after such meeting, apply to two justices and produce to them the agreement, and the names of the persons whom they recommend; which justices shall then, or within three days after, appoint† one of the persons recommended to be visitor; but if he refuse to accept the office, they shall then appoint one other of the persons named; and if he decline it, they shall appoint the third; and if he decline it, the guardians shall serve that office *monthly* by rotation, subject to the controul of the justices: —and such visitor, if not a guardian, may nominate (IX) a deputy, if he think fit, who, in the absence of such visitor, and under his direction, shall act as inspector of the matters committed to the care of the visitor; and make report thereof to him, and render him all assistance in his power:—and every visitor shall superintend every house, and settle the accounts between the guardians and the treasurer, if any question arise, and also shall settle all doubts which may arise concerning the

* The appointment of a governor is directed to be in like form as precedent VII in the schedule infra.

† The appointment of a visitor is directed to be in like form as the said precedent VII.

persons which ought to be sent to such house, and by every prudent means enforce the rules established under this act*;—and such governor, guardian, and treasurer, is to observe the directions from the visitor:—and where any act shall be required to be done by a justice, such visitor, if not a justice, or his deputy, shall apply to some neighbouring magistrate to do the same:—and every visitor or deputy shall be freed from serving constable, and all parochial offices, and also from serving upon juries while in office; and a certificate (X) under the hand of a justice shall be evidence of his serving the office. *s.* 10.

Also if two-thirds in number and value, of the owners or occupiers *within any single parish*, shall desire to have a visitor, and shall recommend three persons, the justices shall appoint one in like manner. *s.* 11.

Appointment of treasurer.

The guardians of *the parishes united*, shall recommend to the justices one of their own body to be treasurer of the poor-house; and two justices are to appoint† the guardian recommended, or any other whom they think better qualified;—which treasurer shall give security to the satisfaction of the justices, to the other guardians, and their successors, for accounting for the money which shall come to his hands; and shall keep the accounts, receive the money to be contributed by each parish, and pay the bills and expences ordered to be paid by the guardians, at their monthly meeting; and shall lay his accounts before the guardians, at every such meeting; and shall once in every year, within 14 days before *Michaelmas* quarter sessions, make out a fair account of the expences, under the heads specified‡; and also an account of the number of the poor, distinguishing their age and sex, and how they have been employed, and how much money hath been earned by labour in the year preceding; which shall be laid before the visitor, and signified under his hand, if he approves the same, and shall afterwards be transmitted to the clerk of the peace, or town clerk, before or at the quarter sessions, and be by him laid before the court for inspection:—and such treasurer shall be allowed such annual sum, not exceeding 10*l.* as the visitor, if not a guardian, shall think fit; and if no such visitor, as two justices shall appoint. *s.* 12.

Vacancies in offices to be supplied.

And when any vacancy shall happen in any of the said offices by death, resignation, or removal, meetings shall be called, and recommendations offered to the justices as aforesaid;—and

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* For these rules, see *s.* 34, infra.

† The appointment of a treasurer is directed to be in the like form as precedent VII in the schedule infra, adding the words *to which he has been recommended by the guardians.*

‡ See *s.* 24, *infra.*

they shall in the manner before directed appoint proper successors. *s.* 13.

How long officers to remain in office.

And the offices of guardian, governor, visitor, or treasurer, shall determine in *Easter* week, on the day upon which the public meeting for such parish shall be held; and the persons, who, according to this act, are to recommend to such offices, shall either agree with the persons who held the same to continue in office, or shall recommend others as before directed. *s.* 14.

In what cases justices of a different limit may act.

And if within any limit, wherein any poor-house shall be situate, there shall be no acting justice, or only one, or if the justices there shall be absent, or incapacitated, any justice of any other limit may act. *s.* 15.

Justices may appoint special sessions for executing the powers of this act.

And the justices within their limits may appoint special or privy sessions for executing this act, causing notices to be given to the justices, peace officers, and guardians; and may adjourn such privy sessions, causing like notices to be given thereof. *s.* 16.

Guardians are to provide houses and proper utensils.

The guardians of the poor shall provide a house with proper buildings and accommodations thereto, when wanted, either by erecting new ones on land to be purchased or rented by them, altering old ones, or hiring buildings for the purpose; and shall fit up and dispose the same, with the advice of the visitor, if any, at the expence of such parish; and shall provide such utensils and materials as they think necessary for their employment. *s.* 17.

Poor-houses where to be situated.

And the poor-houses or work-houses shall be situate within the parish, if it be a single parish, and if several parishes be united, they shall be within one of the parishes, and not in any other, without the consent of three-fourth parts, in number and value, of such owners or occupiers first had, who shall be assembled at a public meeting as before directed. *s.* 18.

How rented.

And all the houses, buildings, and lands hired under this act, shall be hired for such term, and on such conditions, as are specified in the agreement (see form IV in the schedule infra); and shall be free from all parochial and parliamentary taxes, except such as they were assessed to at the time they were first taken. *s.* 19.

Expences of buildings to be paid for by the guardians.

And when such buildings shall be agreed to be erected, repaired, or fitted up, at the expence of the parish, the expences thereof, and of the purchase of the land, shall be paid by the guardians according to the agreement; and the visitor and guardian, when such expences amount to 100*l.* may borrow the same at interest, and secure such money by a charge (XI) upon the poor's rates, in sums not exceeding 50*l.* each:—and the guardians and their successors shall keep down the interest; and when the principal shall be called for, they may borrow it from some other person, by an assignment (XII) of such security indorsed on the back thereof:—[And the assessments for

the relief of the poor, shall from time to time be diminished to such amount as shall be deemed proper and necessary, 44 *Geo.* 3. *c.* 110. *s.* 2.]: and the visitor and guardian shall, as soon as the savings in the poor's accounts shall amount to sufficient to pay off one of the sums borrowed, pay off such sum, and so as to succeeding savings, until the whole be discharged. *s.* 20.

And the guardians of the poor for the time being, shall yearly pay off or provide for a 20th part at least of any monies which shall have been borrowed, and also shall keep down the interest of all monies, which shall be so borrowed. 44 *Geo.* 3. *c.* 110. *s.* 2.

And in case such sum so to be paid off shall not in one year be sufficient to discharge any one of the notes for 50*l.* issued pursuant to the directions of the said act, the same shall, from time to time, remain in the hands of the overseers, until it amounts to a sufficient sum to pay off any of the said notes. 42 *Geo.* 3. *c.* 74.

Visitors and guardians incorporated.

The visitor and guardian shall be one body politic and corporate, and called *visitor and guardian*, or *visitors and guardians, of the poor for the parish, township,* or *place of* ——— *in the county,* &c. *of* ——— or *of the united parishes, townships, or places of* ——— *and* ——— *in the county,* &c. *of* ——— as the case shall be; and are enabled to sue and be sued, and to take by purchase or lease, any lands of inheritance, or for lives or years, not exceeding in any city or town one acre, and not exceeding in the open country twenty acres, for the scite of a house to be built, and for lands to be occupied, for the purposes of this act; and the said corporation is also enabled to take all voluntary grants and donations of lands, or of personal property, which shall be made to them for the use of the poor within such parishes. 22 *Geo.* 3. *c.* 83. *s.* 21.

All persons enabled to dispose of land for the purposes of the act.

And all bodies politic, corporate, or collegiate, corporations aggregate or sole, husbands, guardians, trustees, feoffees in trust, committees, executors, administrators, and all other trustees whatsoever, and every other person seised, possessed of, or interested in lands, necessary to be purchased or rented for the purposes of this act, may contract for, sell, and convey, or lease the same, or any part thereof, not exceeding the quantity aforesaid, unto the said visitor and guardians. *s.* 22.

Money paid for settled lands, to be laid out in purchase of other lands to be to the like uses.

And all money so paid to any such persons, upon such purchase, shall in case the same exceed 20*l.* be by them laid out in the purchase of other lands, and conveyed to the like uses, as the lands in respect whereof such purchase money shall be paid were limited;—such purchases and settlements to be made at the expence of the parish, and charged by the guardians, together with the purchase money, in their accounts;—and until such purchase shall be made, the money shall be placed in the public funds, or on government or real security, in the name

of two persons, one named by the party interested, and the other by the guardian, if it respects a single parish only, and by the visitor, if it respects several parishes united; and the interests arising from such funds, and also the annual rent, where the premises shall be rented, shall be paid to such person as would be entitled to the rents of such lands. *s.* 33.

It shall be lawful for the guardians of the poor, with the approbation of the persons within such parish, qualified as before mentioned, obtained at a public meeting, to sell any house, cottage, or building, erected or purchased for the use of any poor person, at the expence of such parish, and apply the money arising therefrom for the purposes of this act; and also to remove, by order from a justice, the person who shall inhabit the same, or any other house rented or provided at the expence of such parish, if he refuse to quit, after receiving fourteen days notice. *s.* 43. Houses provided for relief of the poor may be sold.

The poor sent to such house shall be maintained therein at the general expence of the parishes adopting the provisions of the act;—and the treasurer, with the assistance of the governor, shall provide provisions for the maintenance of such poor, and keep an account thereof;—and there shall be a meeting of the guardians of every parish at such house, on the first *Monday* in every month, at ten in the forenoon, or on such other day and hour in the first week of every month, as the guardians shall at their first meeting appoint, to state, examine, and adjust the accounts for the preceding month; and at such meeting, the said treasurer shall produce, fairly written, one account of the debt incurred in the preceding month, for utensils and materials for manufacture, and for furniture, alterations, or repairs of the buildings, and also for the salary to the governor or treasurer, and servants (if any), in which account the rent of the premises, if the same shall be rented, shall be charged in the month next after such rent shall become due; which account, when settled, shall be signed by the guardians attending:—and the sums to be paid by each parish, on that account, shall be settled at such meeting, in proportion to the sums paid by each parish, on account of their poor, on a medium of three years next preceding the date of such agreement (to be settled at such first monthly meeting, in the manner to be specified by the agreement to be entered into for uniting as aforesaid, and according to the Precedent XIII in the schedule infra), and in like manner, and in the like proportions, at every succeeding monthly meeting; and the money shall be then, or within one week after, paid to the treasurer, to be by him applied in discharge of the articles and debts contained in such account:—and the said treasurer shall also at the same time produce, fairly written, one other account of the victuals, beer, firing, and other necessaries for the use and maintenance of the poor, and of the governor, at such house, and all other incidental expences; which shall be then accounted for and proportioned How poor to be maintained in the poor-houses.

by the guardians according to the number of persons sent from each of the parishes, and for the time they shall have resided in such house, within such month, according to the precedent XIV in the schedule *infra*;—and the sum due from each parish shall be specified at the foot of such account, which shall, when settled, be signed by such guardians, and be afterwards inspected by the visitor, if not a guardian, and allowed by him if he approve thereof; and in case default shall be made in payment of the sums proportioned to be paid in respect of such parish, for seven days after settled and proportioned, and the money demanded, it shall be lawful for any justice, upon complaint made to him upon oath of such default, to levy the said sums by distress and sale of the goods of any guardian for such parish making default; and at the end of every year the account shall be finally closed, and the balances paid and received, according to the mode prescribed by precedent XIV. *s.* 24.

Expences of casual poor.

And all such casual poor, as may happen to be within, and entitled to relief from any one of such parishes, as may be united, shall be relieved by all the said parishes conjointly, and in the same proportion as they are directed to contribute for the general purposes of the said act*. 33 *Geo.* 3. *c.* 35. *s.* 3.

And the churchwarden and overseer who shall have the custody of the poor's rates, assessments, or accounts, shall produce the same to the persons nominated, in the agreement for uniting parishes, on every request made by them, after four days notice thereof, to enable them to ascertain the expences relative to the poor, on a medium of three years, according to the directions of this act, or in default thereof, shall forfeit 5*l.* for every refusal or neglect. 22 *Geo.* 3. *c.* 83. *s.* 25.

And if the guardian shall not attend each monthly meeting, or send some substantial inhabitant of such parish, to attend and answer the payments for him, in case he be prevented by sickness or accident from attending in person, the guardian making default shall forfeit, not exceeding 5*l.* nor less than 40*s.* *s.* 26.

In what manner guardians and visitors may contract for the diet and clothing of poor persons in the poor-house and for their work.

And it shall be lawful for the visitors and guardians of any parish which shall have adopted the provisions of this act, and shall have a visitor appointed, to make agreements with any person for the diet or clothing of poor persons sent to the house provided under this act, and for the work of such persons, so that no agreement be for longer than twelve months, and so that the same be under the strictest inspection and controul of the visitor, guardian, and governor of such poor-house, and also of the justices for the limit where such poor-house shall be; two of which justices, upon proof of any abuse, shall have power to dissolve such contract. *s.* 2.

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* See sec. 33 of stat. 22 *Geo.* 3. *c.* 83. infra.

And it shall be lawful for the guardians, where any poor-house shall be provided, to enclose from any waste or common lying near thereto, with the consent of the lord of the manor, and the major part in value of the freeholders, or persons having right of common, signified under their hands and seals, any part of such waste or common, not exceeding ten acres, for the purpose of building upon, or occupying, cultivating, and improving the same, for the use of such poor-house, and the poor persons within the parishes. *s.* 27.

Waste land adjoining to poor-houses may be inclosed with leave of the lord of the manor.

Every person sent to any house provided under this act, shall at the time of entering such house, deliver to the governor or his assistant, if any, an order (XV) signed by one of the guardians, for the admission of such person, which order shall be kept by the governor, and entered in a book. *s.* 28.

Persons sent to poor houses to bring with them an order signed by a guardian.

No person shall be sent to such poor house, except such as are become indigent by old age, sickness, or infirmities, and are unable to acquire a maintenance by their labour; and except such orphan children as shall be sent thither by order of the guardian, with the approbation of the visitor; and except such children as shall necessarily go with their mothers thither for sustenance. *s.* 29.

What persons may be sent to the poor-houses.

All infant children of tender years, and who, from accident or misfortune, shall become chargeable, may either be sent to such poor-house, or be placed by the guardian, with the approbation of the visitor, with some reputable person in or near the parish to which they belong, at such weekly allowance as shall be agreed upon between the parish officers and such person, with the approbation of the visitor, until such child shall be of sufficient age to be put into service, or bound apprentice to husbandry, or some trade; and a list of the names of every child placed out, and by whom and where kept, shall be given to the visitor; who shall see that they are properly treated, or cause them to be removed, and placed under the care of some other person, if he finds cause so to do; and when such child shall attain such age, he shall be placed out at the expence of the parish to which he belongs, according to the laws in being: but if the parents or relations of any poor child sent to such house, or so placed out, or any other responsible person, shall desire to receive and provide for such poor child, and signify the same to the guardians at their monthly meeting, the guardians shall dismiss such child from the poor-house, or from the care of such person, and deliver him to the parent, or person aforesaid; provided nothing herein shall give any power to separate any child, under the age of seven years, from his parent, without the consent of such parent. *s.* 30.

How poor children are to be provided for.

And the guardian of the poor shall provide, at the expence of such parish, clothing for the persons sent by him to such poor-house; and in case of neglect so to do, the governor, or one of the guardians of such house, shall make complaint there-

Clothing to be provided for the poor in the poor-houses.

of to some justice, who shall summon the guardian making neglect, to appear before him to answer the complaint, and direct him to provide such clothing as shall to such justice appear necessary; and if such guardian shall make default in providing such clothing, within ten days after such direction, it shall be lawful for such justice to direct the governor, or the guardian making complaint, to provide the same, and to demand from such guardian the charges of such clothing; and in default of payment thereof, upon demand made, it shall be lawful for such justice to levy the same, and the costs attending the recovery thereof, by distress and sale of the goods of such guardian making default. *s.* 33.

Rules and orders established.

And the rules hereinafter mentioned* shall be observed at every such poor-house or work-house, with such additions as shall be made by the justices at some special session, provided such additions shall not be contradictory to the said rules; and provided the same be not repealed by the justices at their quarter sessions; and the governors of every such house are to cause the same to be printed in plain legible characters, and fixed up in some conspicuous part of every such house. *s.* 34.

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* The following are the rules here referred to:

" Rules, orders, by-laws, and regulations, to be observed and
" enforced at every poor-house, to be provided and estab-
" lished under the authority of the act of the twenty-second
" year of king *George* III.

' *First.* That the several persons who shall be sent to any ' such poor-house, who are capable of doing any work, shall ' be employed by the governor in some labour which may be ' best suited to their strength and capacity.

' *Second.* That the governor shall take particular care to ' keep the said house, and the several apartments therein, and ' also the several persons who shall inhabit the same, clean and ' wholesome; and for that purpose he shall employ such of the ' said poor persons who shall be sent thither, whom he shall think ' most able and best qualified for the offices to assist him ' therein, and also in the providing and dressing victuals for ' the use of such poor persons; and if any such poor person ' shall refuse or neglect to perform the work or labour in which ' he or she shall be so employed, or shall be directed to do by ' the governor, every such person shall be punished by confine- ' ment, or alteration of diet, in such manner as the governor ' shall direct; and for a second offence of the like sort, complaint ' thereof shall be made to some justice of the peace for the limit, ' who, on conviction, shall commit such person to the house of ' correction for any time not exceeding two calendar months, ' nor less than one calendar month.

All idle or disorderly persons, who are able, but unwilling to work or maintain themselves and families*, shall be prose- Idle persons neglecting to work.

* See 32 *Geo.* 3. *c.* 45 in p. 725 supra.

'*Third.* That the apartments in the house or houses to be 'provided as aforesaid, shall be adapted so as to accommodate 'the poor who shall be sent thither in the best manner they 'are capable.—That the governor shall place in the best apart- 'ments such poor persons who, having been creditable house- 'keepers, are reduced by misfortune, in preference to those 'who are become poor by vice and idleness; and that separate 'apartments shall be provided for the reception of the sick and 'distempered poor, and an apothecary or surgeon to be sent 'for to attend them when there shall appear necessity for it, at 'the expence of the parish or place to which such poor persons 'belong.

'*Fourth.* That such poor persons who are able to work, 'shall be called up by ring of bell, and set to work by six in 'the morning from *Lady-day* to *Michaelmas*, and by eight from '*Michaelmas* to *Lady-day*; and continue until four in the af- 'ternoon from *Michaelmas* to *Lady-day*, and from *Lady-day* 'to *Michaelmas* till six in the afternoon (meal times and times 'for reasonable recreation excepted); and if any such poor per- 'son should refuse or neglect to do such work as shall be al- 'lotted him or her, or wilfully spoil the same, or depart from 'such house without leave from the governor, or shall be guilty 'of any disorder or disobedience to these rules and orders, the 'governor shall reprove such person for the same, and punish 'him or her by confinement or alteration of diet, as the said go- 'vernor shall think fit; and if such person shall be guilty of the 'like offence a second time, the governor shall complain thereof 'to the visitor of such house, who is hereby authorised to order 'the punishment of confinement to be increased to such degree 'as he shall think fit.

'*Fifth.* That the governor shall enter in a book to be kept 'by him, an account of the household goods, linen, furniture, 'and utensils provided for the said house; and also an account 'of the materials bought for manufacture, and of the goods ma- 'nufactured there; which shall be laid before the guardians 'at their monthly meeting, and before the visitor whenever he 'comes to such house.

'*Sixth.* That the governor shall visit the several persons 'maintained in such house or houses, and their apartments, 'once at least in every day; and shall take care that there is 'no waste of fire, candles, or provisions; and shall see that 'the fires and candles are put out at the hours fixed for such 'persons going to bed, which shall be at eight of the clock be-

cuted by the guardians of the parishes where in they reside, and 'punished as idle and disorderly persons' under 17 *Geo.* 2.; and if any guardian shall neglect to make complaint thereof, against every such person to some neighbouring justice, within ten days after it come to his knowledge, he shall forfeit not exceeding 5*l.* nor less than 20*s.* one moiety to the informer, and the other to be disposed of as the other forfeitures are directed. *s.* 31.

Poor persons unable to get employment.

Where there shall be in any parish, any poor person who shall be able and willing to work, but who cannot get employment, it shall be lawful for the guardian of the poor, on application made to him by such poor person, to agree for the labour of such poor person, at any work or employment suited to his strength and capacity, in any parish near the place of his residence, and to maintain or cause such person to be maintained, lodged, and provided for, until such employment be procured, and during the time of such work, and to receive the money earned by such work or labour, and apply it in such maintenance, as far as the same will go, and make up the deficiency, if any, and if the same shall happen to exceed the money expended in such maintenance, to account for the surplus, which

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'tween *Michaelmas* and *Lady-day*, and nine between *Lady-day* 'and *Michaelmas*.

'*Seventh.* That when any person shall die in the house, 'the governor shall take care that the body of such person be 'immediately removed into some separate apartment, and be decently buried, as soon as conveniently may be; and also take 'care of the clothes and goods of such person, and deliver 'them to the guardian of the poor of the parish or place to 'which such person did belong, who is to pay the charges of 'the funeral of such poor person.

'*Eighth.* That no poor person be permitted to go out of 'the poor-house, nor any person be permitted to come into such 'house or houses, except the persons maintained and employed 'there, without the permission of the governor; and that no 'spirituous liquors be permitted to be drank in such house or 'houses; and that no other liquors shall be brought thither, 'without the permission of the said governor.

'*Ninth.* That the rules, orders, and bye-laws shall be publickly read by the governor to all the poor persons kept in 'such house or houses, once at least in every month.

'*Tenth.* That all the poor persons able to go to church, 'shall attend divine service every *Sunday*.

'*Eleventh.* That the governor shall dismiss from the poor-house or work-house, every person who shall, in the opinion 'of the guardian or guardians, be thought improper to continue 'longer there, and upon an order from him or them for that 'purpose.'

shall afterwards, within one month, be given to such poor person, if no further expences shall be then incurred on his account to exhaust the same. And in case such poor person shall refuse to work, or run away from such work, complaint shall be made thereof by the guardian to some justice, who shall inquire into the same upon oath, and on conviction punish such offender, by committing him to the house of correction, to be kept to hard labour for not exceeding three months, nor less than one. *s.* 32.

It shall be lawful for any justice, on complaint made upon oath, by or on behalf of any poor person, that the guardian, upon application made to him, hath refused such poor person relief, and, after inquiring into the condition of such poor person upon oath, either to order him, by writing under the hand of such justice, some weekly or other relief, or direct such guardian to send such poor person to the poor-house, in case he appear a fit object to be kept there, according to this act; which orders shall be complied with, or cause shewn to the contrary, before such justice, by such guardian, within two days after he shall receive the same;—and every person receiving weekly relief shall wear the badge directed by 8 & 9 *Will.* 3*. unless directed otherwise by a justice, upon proof of decent and orderly behaviour; or if it shall appear to such justice, that the person is able and willing to work, but wants employment, it shall be lawful for such justice to order the guardian to procure him maintenance and employment as before directed;—and if any guardian shall, upon notice of such order, refuse or neglect to obey the same, he shall forfeit 5*l.*;—or if it shall appear to such justice, that such person is an idle or disorderly person, and hath not used proper means to get employment, it shall be lawful for the justice, after examining such person, and hearing the circumstances of the case, to commit such person to the house of correction for not exceeding three months, nor less than one;—or if it appear to such justice, upon inquiry, that the husband or father of such person is an idle or disorderly person, able to work, but by his neglect of work, or for want of seeking employment, or by spending the money he earns in alehouses, or places of bad repute, does not maintain his wife or children, and suffers them to be reduced to want, it shall be lawful for such justice to commit the husband or father to the house of correction, for not exceeding three months, nor less than one †. *s.* 35.

In what cases and how a justice may order relief to poor persons.

(XVI)

And when any complaint or application shall be made to a justice for the relief of any poor person, within any parish for which a visitor shall be appointed, such justice shall not summon the guardian to appear before him, unless application shall

Application of penalties inflicted on guardians.

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* See p. 801. supra. † See 32 *Geo.* 3. *c.* 45. in p. 785. supra.

have been first made, by the person complaining, to the guardian, and, if he refuses redress, to the visitor (it being part of his duty to adjust matters of that sort), who shall order relief if he thinks it necessary, either within or out of the house; but if sufficient relief shall not be given or ordered, the poor person shall be redressed by such justice as before directed. *s.* 36.

And out of the penalty inflicted upon the guardian for disobeying the order of a justice, so much thereof as the justice shall direct to be paid to such poor person shall be paid to him accordingly, and the remainder applied as other penalties. *s.* 37.

*Poor persons afflicted with sickness or the like when at a distance from their parish.*

If any poor person shall be retarded on his passage through any parish in which he has no settlement, by reason of any accident, or being afflicted with sickness or bodily infirmity, without the means of subsistence, or of proceeding to his place of settlement, the guardian living near the place where such distressed object shall be, shall, upon notice thereof, provide lodging, and suitable nourishment and assistance (and also clothing if necessary) for such person until he can be removed with safety; and when such person shall be fit to be removed, shall take such person to some neighbouring justices, who shall examine him upon oath, as to his settlement, and make order for his removal thither, if they think fit: and the parish officer who shall so receive and provide for such person, shall make a charge of the expences, which being allowed and certified by the justices, or some other neighbouring justices where such person was found, the same shall be paid by the guardian of the parish where such poor person shall be settled, in case the same can be discovered, and shall be within that county, on demand made thereof, and on the production of such allowance and certificate, or in default of payment, the same shall be levied upon the goods of such guardian making default, after summons, by warrant from a justice having jurisdiction there; and if any poor and sick person shall die before he can be examined, or if any poor pe rsonshall be found dead in any parish to which he did not belong, the guardian of such parish shall cause such person to be buried in the parish where he died, or was found dead, and shall make a charge of the expences, which shall be allowed and certified by a justice, after examining into the place of his settlement, and shall be paid by the guardian of the parish where such person shall have been settled, if the same shall be within that county.—But in case the settlement of such poor persons respectively cannot be discovered, or shall not be within that county, the same shall be paid by the treasurer of such county where such person was relieved, on the production of such allowance and certificate, out of the county or public money. *s.* 38.

Act not to affect settlements of the poor.

But nothing herein shall alter or affect the settlement of any

person, or give any illegitimate child, born in any poor or workhouse under this act, a settlement in the parish in which such workhouse shall be (but such child shall be considered as settled in the parish to which the mother belongs), or to alter or affect any of the provisions established by any act for the management of any particular house of industry, or workhouse, in this kingdom. *s.* 39.

Penalty on persons sent to the poor-house embezzling goods.

If any poor person, sent to such house, shall embezzle or wilfully waste any of the goods committed to his care, or shall take, without permission of the governor, any goods provided for the use of such house, or belonging to any person residing there, complaint shall be made upon oath to some neighbouring justice, who shall hear the same, and the party accused; and such justice is, upon conviction, to commit such offender to the house of correction, to hard labour, for not exceeding six, nor less than two months. *s.* 40.

Penalty on enticing poor persons from one parish to another.

When any guardian or other person shall entice or remove, or cause to be enticed or removed, any poor person from one parish to another, which shall adopt this act, without an order of removal from two justices for that purpose, every person so offending shall forfeit not exceeding 20*l.* nor less than 5*l.* *s.* 41.

Officers not furnish the house with provisions or goods.

If any visitor, guardian, or governor, shall sell or furnish any materials, goods, clothes, victuals, or provisions, or do any work in his trade for the use of any workhouse, poor-house, or poor persons, within any parish for which he shall be appointed to act, or be concerned in trade or interest with any person who shall sell or furnish the same, he shall forfeit not exceeding 20*l.* nor less than 5*l.* on being convicted. *s.* 42.

Recovery and application of penalties.

All penalties shall be recovered before one justice where the offender dwells, who shall, upon conviction, in default of payment, after summons, and demand made, cause the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of any justice where such offender shall dwell, rendering the offender the overplus, after charges deducted; and in case sufficient distress shall not be found, then such justice may commit such offender to the house of correction, for not exceeding six calendar months nor less than one; and such penalty, if not otherwise disposed of, shall be paid to the treasurer of such house, to be applied by him towards defraying the monthly expences of victuals, beer, firing, and other necessary provisions for the poor within such house. *s.* 45.

Appeal.

But any person aggrieved by the act of any justice, out of sessions, may appeal to the next general quarter sessions, giving eight days notice thereof to the party against whom the complaint shall be made, and giving security by recognizance, acknowledged before a justice, with a sufficient surety, to pay the costs attending such appeal, if the matter be determined against

the appellant; and the quarter sessions are to hear and determine such appeal, and to award costs for or against the appellant; which determination shall be final, and shall not be removed by *certiorari*. *s.* 46.

Act not to extend to any place which shall not adopt the provisions thereof.

*But note, it is expressly provided by the forty-fourth section of the said act, that nothing therein shall extend to any parish which shall not agree to adopt the provisions thereof in the manner thereby directed.*

Directors and acting guardians of the poor, incorporated by acts of parliament, may in certain cases, make such assessments as may be necessary for the support and maintenance of the poor, notwithstanding they may exceed the assessments limited by the respective acts.

And by 36 *Geo.* 3. *c.* 10, it shall be lawful for the directors and acting guardians of the poor incorporated by any act of parliament for the relief or maintenance and employment of the poor, or for any other persons, by whatsoever name they are called or described, to whom is given, by any such incorporating act, the power of appointing the sum to be assessed for the maintenance of the poor, and other the purposes of such act, at any of their annual, quarterly, or other general meetings, whenever the average price of wheat at the corn market in *Mark Lane*, *London*, for the quarter immediately preceding such annual, quarterly, or other general meeting, shall have exceeded the average price of wheat at the same market during those years from which the average amount of the poor's rates was taken upon the passing of the several incorporating acts to assess the several parishes, hamlets, and places within their respective hundreds, towns, or districts, which now are or usually have been charged to the poor's rates, in such respective sums as they shall think necessary for defraying the expences attending the support and maintenance of the poor for the current quarter, and for paying the interest of the money borrowed and due by virtue of the said acts, and of any debts which may have been incurred since the 1st *Jan.* 1795, in the maintenance of the poor, and for other the purposes of the said acts, notwithstanding such sums should exceed the amount of the assessments limited by such acts of parliament to be assessed on the respective parishes, in one year.

Assessments by virtue of this act to be made, as those under the incorporating acts.

But the sums to be assessed, and the assessments to be made by virtue of this act shall be assessed, made, collected and paid in the same manner, and subject to the same regulations as the assessments made by virtue of the several incorporating acts; also, the sums to be assessed by virtue of this act, shall be in the same proportions as the assessments which have hitherto been made by the said incorporating acts.

### *Schedule to the foregoing stat.* 22 Geo. 3. *c.* 83. *containing the forms of proceedings therein referred to.*

I. Form of agreement at a public meeting, for a single parish or township, to adopt the provisions of stat. 22 *Geo. III.*

*It is agreed at a public meeting duly holden this —— day of —— at —— in the county of —— pursuant to the*

*directions of an act, made in the twenty-second year of king* George *the Third*, for the better relief and employment of the poor *That the parish* [*or township*] *of* ——— [as the case shall be] *shall from henceforth adopt in all respects, the provisions, rules, orders and regulations, and comply with all the requisites prescribed by the said act : and that our work-house* [if there is one] *shall be immediately fitted up and accommodated for the purposes mentioned in the said act.* [Or if there is none] *We will forthwith provide a proper work-house either by erecting a new one, or hiring altering, and fitting up buildings suitable to the purpose, at some convenient place within our parish, &c. And we recommend to the consideration of the justices* ——— *and* ——— *as fit and proper persons for guardians of the poor; and* ———*and*——— *as fit and proper persons for governors of the poor-house, for the said parish, township, &c.* [as the case shall be].

*Given under our hands, &c.*

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## II. Form of consent and approbation of the Justices.

*We* A B *and* C D *esqrs. two of his majesty's justices of the peace for the county, &c. of* ——— [as the case shall be], *considering the parish or township, &c. of* ——— *within the said county, &c. to be of magnitude sufficient to have a work-house provided within it for the reception and employment of the poor, and to adopt the provisions of the act* (for the better relief and employment of the poor) *passed in the twenty-second year of the reign of king* George *the third, do hereby give our approbation and consent thereto, pursuant to the directions of the said act; and we do also agree to the salaries fixed by the said agreement to be paid to the guardian and governor.*

*Given under our hands this* ——— *day of* ———

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## III. Form of agreement, at the public meeting, for two or more parishes, townships, or places, to unite.

*It is agreed, at a public meeting, duly held this* ——— *day of* ——— *at* ——— *in the county of* ——— *pursuant to the directions of the said act, that the parish* [or township] *of* ——— [as the case shall be] *shall from henceforth in conjunction with the parishes or townships of* ——— *and* ——— [as the case shall be], *adopt in all respects the provisions, rules orders, and regulations, and comply with all the requisites prescribed by the said act for parishes uniting for those purposes; and that a convenient work-house, and other buildings and necessary conveniences, shall be immediately provided at or near* ——— *and properly fitted up and accommodated for the purposes mentioned in the said act: and we recommend to the consideration of the justices of the limit wherein such work-house will be situate,* A B C D, *and* E F, *as fit and proper persons qualified for guardians of the*

*poor; and* G H I K, *and* L M, *as fit persons to be governors of the poor-house for the said parish* [or township, as the case shall be]; *and do agree to allow the person who shall be appointed guardian, a salary of* ——— per annum *for his trouble in executing that office; and to the person who shall be appointed governor of the poor-house, a salary of* ——— *for his trouble in executing that office.*

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IV. Form of agreement for uniting the parishes or townships.

*It is agreed, this* ——— *day of* ——— *by and between the guardians of the poor of the parishes of* ——— *and* ——— *and of the townships of* ——— *and* ——— *in the county of* ——— *(which maintain their own poor separate and distinct from the other parts of their respective parishes) whose names are hereunto subscribed, pursuant to the opinion of two third parts, in number and value as aforesaid, of the owners or occupiers of lands, tenements, and hereditaments, assessed to the poor's rates within such respective parishes and townships, at meetings duly held for that purpose, qualified according to the directions of the act passed in the twenty-second year of the reign of his majesty king* George *the Third, and with the approbation of* A B *and* C D, *two justices of the peace, according to the directions of the said act, That the said respective parishes and townships shall be united for the better maintaining and employing their poor; and that a convenient house or houses, with proper buildings and accommodations thereto, and with land fit for gardens, orchards, and the keeping of a cow or cows, shall be built* [*purchased or hired,* as shall be found most suitable] *at or near* ——— *for the reception and accommodation of the poor, as soon as conveniently may be, and if hired, the same shall be rented upon such terms as shall be agreed upon between the guardians of the poor of the said several parishes and townships, or the major part of them, and the person or persons owning or being authorised to let such buildings, lands, and premises; but no such agreement shall be made for a longer term than twenty-one years, unless the guardian or guardians shall have an option to vacate it at the end of that term, on giving twelve months notice in writing of his or their intention so to do, nor for a shorter term than three years; and such houses shall be fitted up and made convenient for the purposes aforesaid, at the expence of the landlords* [or *tenants,* as shall be agreed between them]: *That the rents of the said houses, the expences of fitting up, making additions or alterations* [where they shall be agreed to be paid by the tenants], *and of the furniture thereof, and also the utensils and materials to be used for the purpose of employing the poor, and the wages and allowances to be paid to the governor of the house, shall be paid by the said several guardians in their due proportions, according to the amount of the money raised by the*

*poor's rates for their several parishes and townships, in respect of their poor, on a medium of three years preceding such agreement; and that such proportion shall be ascertained by* ——— *and* ——— *whom we have nominated for that purpose, and shall be paid by the guardians of the poor of the said respective parishes and townships, to the person who shall be authorised to receive the same, within seven days after the same shall be so ascertained; and that the money earned by the labour of such poor shall be brought to the credit of that account at the end of every year: That the expences of victuals, beer, and firing, for the poor and the governor [and for the assistants,* when any shall be found necessary] *in every such house or houses, with all other small incidental expences, shall be proportioned, at the end of every month, according to the number of poor which shall be sent from each of the said respective parishes, townships, and places; and for the time they shall have resided there within such month: That the guardians of the poor of any of the said parishes, townships, or places, shall be at liberty to withdraw from this agreement at the end of the first three years, or any succeeding three years, on giving twelve months notice of such their intention, if it shall be so determined by three fourth parts of the owners or occupiers of lands, tenements, or hereditaments, assessed to the poor's rates, and qualified as aforesaid, at a public meeting, summoned by due notice as aforesaid, specifying the occasion of such meeting; and in such case they shall receive one half of their due proportion, to be ascertained by the persons above named, or such other persons as the parties shall agree upon for that purpose, of the value of the furniture, stock, utensils, and implements then remaining at such poor-house, after paying their proportion of the rent, and of the salaries to the governor, and other officers, to the end of the then growing year: And that the guardians of the poor of each parish, township, and place, shall provide suitable and convenient clothing for the poor, to be sent to the said house or houses, from their respective parishes, townships, or places, and charge the expences thereof in their accounts. And we recommend to the justices of the limit where such house is to be situated,* A B C D *and* E F, *as persons duly qualified for the office of visitor of the said poor-house, and* I K L M *and* N O, *as persons duly qualified for the office of governor of the said poor-house.*

*We* A B *and* C D, *the justices of peace mentioned in the within-written agreement, do hereby give our approbation to the parishes and places herein named being united for the purposes of the act within-mentioned.*

*Witness our hands, this*
*day of*

V. Form of entry to be made by the clerk of the peace or town clerk.

*Be it remembered, That on the* ——— *day of* ——— A B *deposited in my hands a copy of the agreement made between the churchwardens and overseers of the poor of the parishes or townships of* ——— *and* ——— [as the case shall be] *in the county,* &c. [as the case shall be] *of* ——— *for uniting in hiring, purchasing, or building houses, at or near* ——— *in the said county,* &c. *and providing for the maintenance and employment of a certain description of poor persons belonging to the said parishes, townships, and places, pursuant to the statute made in the twenty-second year of the reign of his majesty king* George *the Third.*

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VI. Form of a notice for the meeting.

*Notice is hereby given, That a public meeting, to consult the owners or occupiers of lands, tenements, or hereditaments, assessed after the rate of five pounds* per annum, *about hiring, purchasing, or building* [as the case shall be] *a house or houses, and providing for the maintenance and employment of the poor, pursuant to the statute of the twenty-second year of* George *the Third, will be held at* ——— *the* ——— *day of* ——— *at* ——— *in the forenoon.*

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VII. Form of appointment of a guardian.

*We* A B *and* C D, *two of his majesty's justices of peace for the county of* ——— *acting for the hundred,* &c. *of* ——— *in the said county, do hereby appoint* E F, *of* ——— *to execute the office of guardian of the poor for the parish,* &c. *of* ——— *within the said hundred,* &c. *for one year, to be computed from* ——— *to which he has been recommended at a public meeting holden the* ——— *day of* ——— *pursuant to the directions of the act passed in the twenty-second year of the reign of his majesty king* George *the Third,* for the better relief and employment of the poor.

*Given under our hands, this* ——— *day of* ———

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VIII. Fo m of a draft by the guardian on the churchwarden or overseer appointed to collect the poor's rates.

To *A B,* collector of the poor's rates of the parish [*or* township] of ——— [*as the case shall be.*]

*You are hereby authorised and directed to pay to* C D *the sum of* ———— *for* [here describe the occasion of the payment, whether for *house rent*, *clouthing*, or for *weekly relief of poor persons*, &c. &c. as the case shall be], *and take his receipt for the same, which will be your discharge for such payment. Dated this* ——— *day of* ———

E F

*Guardian of the poor for the parish* [or *township*] *aforesaid.*

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IX. Appointment of a deputy visitor.

*I* A B, *visitor of the poor and poor-house for the parish, township, &c. of* ———— [or *for the united parishes, townships*, &c. *of* ———— *and* ————] *in the county of* ———— *do hereby nominate and appoint* C D *to be my deputy visitor and assistant, during my will and pleasure, pursuant to the power given to me by an act, passed in the 22d year of the reign of his majesty king* George *the Third (intituled,* An act for the better relief and employment of the poor), *and authorise him to discharge the duty required of him by the said act.*

*Witness my hand, this* ———— *day of* ————

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X. Certificate of serving the office of visitor.

*I* A B *one of his majesty's justices of the peace for the county, &c.* [as the case shall be], *of* ———— *do hereby certify that* C D, *of* ———— *in the said county, hath been appointed to, and is now serving, the office of visitor of the poor for the parish or township of* ————[or *for the parishes and townships of* ————] *in the said county,* [as the case shall be], *pursuant to the direction of the act passed in the 22d year of the reign of his majesty king* George *III.*

*Dated this* ———— *day of* ————

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XI. Security for money borrowed.

*By virtue of an act made in the 22d year of the reign of his majesty king* George *III.* (*intituled,* An act for the better relief and employment of the poor), *we* A B, *visitor, and* C D, *guardian of the poor, for the parish* [or *township*, as the case shall be] *of* E *in the county, city, &c. of* ———— *in consideration of the sum of* ———— *to us in hand paid by* ———— *for the purpose of purchasing, building, erecting, repairing, fitting up, or furnishing,* &c. [as the case shall be] *a convenient house, buildings, and offices, for the reception, accommodation, and employ-*

*ment of the poor of the said parish or township, and for providing suitable stock and utensils for that purpose, do hereby charge the poor's rates, to be hereafter made, and the several sums of money to be raised thereupon, within the said parish,* [or *township*, as the case shall be], *with the payment of the said principal sum, and interest after the rate of* ——— per centum per annum, *half-yearly, as the same shall become due.*

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XII. Transfer of the security for money advanced.

*I do transfer this security, with all my right and title to the principal money hereby secured, and to all the interest now due, or hereafter to be due, unto* C D, *his executors, administrators, and assigns. Dated this* ———— *day of* ————

A. B.

*Witness*, E. F.

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XIII. Mode of adjusting the first account mentioned in the act, respecting utensils, materials, furniture, rent, &c.

*Let it be supposed, that the parishes or townships of* A B C *and* D, *have agreed to be united under the authority of the act; and that* E *and* F *are the persons named in the agreement as arbitrators or referees, to settle and adjust the proportions which each parish or place is to pay.*

*It will be necessary for* E *and* F, *at their first meeting, to call upon the officers of every such parish, township, or place, for their assessments and accounts, in order to see what they have paid to their poor, on a medium of three years preceding the agreement; who are required by the act to produce them, under a penalty for refusal.*

*When the arbitrators have got these materials, it will be necessary to separate and deduct every matter which does not relate to the poor; for instance, money paid to the county rates, or for the expences of the constable, headborough, or militia, which are all now included in the poor's rates; and, as some of these parishes may have had expences occasioned by litigations about settlements and removals, and others may not, they should exclude all such expences in the account.*

*When the accounts have been so inspected and examined, and the proper deductions made, they may be supposed to appear:*

| | | | |
|---|---|---|---|
| *That* A *has paid for the first of the three years* - | 65 | 7 | 6 |
| *for the second year* - - - | 87 | 2 | 0 |
| *for the third year* - - - | 105 | 0 | 0 |
| *Making together* | 257 | 9 | 6 |

| | | | |
|---|---|---|---|
| *A third part of which sum* (*being A's medium will be* | 85 | 16 | 6 |
| *Let B's payments be calculated in the same manner, which may be supposed to amount, on the medium of three years, to* - - - - - - | 110 | 0 | 0 |
| *C's ditto, to* - - - - | 97 | 0 | 0 |
| *D's ditto, to* - - - - - - - | 140 | 0 | 0 |
| *The total amount of the annual payments will be* | 432 | 16 | 6 |

*Suppose the month's expences paid by the several parishes under the above heads, according to the directions of the act, should amount to* 300*l. the question will be, If* 432*l.* 16*s.* 6*d.* (*the total medium of all the parishes*) *require* 300*l., what will* 85*l.* 16*s.* 6*d. require? When that shall be worked by the Rule of Three, multiplying the third number by the second, and dividing it when so multiplied by the first, the answer will be,*

| | *l.* | *s.* | *d.* |
|---|---|---|---|
| *That A's proportion amounts to* - - - | 59 | 9 | 5 |
| *B's proportiun, when worked in the same manner, will be* - - - - - - - | 76 | 5 | 0 |
| *C's ditto,* - - - - - - - | 67 | 4 | 7 |
| *D's ditto,* - - - - - - - | 97 | 1 | 0 |
| *Making together the whole sum expended* | 300 | 0 | 0 |

*When those medium sums shall be settledand proportioned at their first meeting, there will be no occasion to repeat that trouble afterwards, as the first sum will be the same on all future calculations; and to prevent trouble in adjusting the proportions at every monthly meeting, at every poor-house, soon after the first medium proportions shall be so ascertained, there shall be a table fixed, calculating the proportions of each parish, township, or place, to any given sum, from the smallest to the greatest, that is likely to be expended in that district within the month; which will make every account clear and easy to the meanest understanding, and will be liquidated in an instant.*

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XIV. Mode of adjusting the second account mentioned in the act, respecting the victuals, beer, firing, and other necessaries.

*As soon as the agreement is made for uniting several parishes, &c. the guardians shall meet and consider what will be a proper weekly sum to be paid into the hands of the treasurer for every person admitted into the poor-house, estimating it as near as they can to the probable expence of maintaining them, the guardians should pay to the treasurer, at every monthly meeting, what shall be due for every such person, upon that calculation, for the time he has*

*been kept there, in the month preceding; and, in order to avoid fractions, if any person shall have been there four days, or more, in any of the weeks, it should be considered as a full week, and if less than four days, no charge shall be made for it: That, in order to avoid difficulties in adjusting the account, a table should be provided in like manner as before, and fixed up in the house, with proper columns for the number of persons, the number of weeks, and the total amount, according to the weekly sum so agreed upon; by which that account will likewise be settled without the least trouble or difficulty.*

*The several monthly sums paid by each parish on this second account, and also the gross sums, should be entered in the treasurer's books; and at the end of the year, it should be computed, whether the payments by the several parishes have amounted to more, or less, than the sum expended; if to more, the guardian of each parish should receive, if to less, he should pay his proportion thereof to the treasurer, to be computed according to the first account, as directed by the act.*

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### XV. Order for admission of paupers.

To the governor of the poor-house at *E*.

*You are hereby ordered and required to receive* A B, [describe his or her age, whether married or single], *a poor person belonging to the parish* [or *township*, as the case shall be] *of* ——— *in the county of* D, *into the poor-house at* E, *and to accommodate and provide for such person in a proper manner, according to the rules and establishment of the said house.*

*Given under my hand, this* ——— *day of* ———

H G

*Visitor* [or *guardian*, as the case shall be].

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### XVI. Justice's direction to excuse the badge.

*I* A B, *a justice of peace for the county* [*riding, division,* &c. as the case shall be] *of* ——— *having received proof upon oath, before me, that* C D, *a poor person, receiving weekly relief from the parish* [*township*, &c. as the case shall be] *of* ——— *in the county*, &c. *of* ——— *of* ——— *is a person of very decent and orderly behaviour, do hereby direct the guardian* [or *overseer*, if no guardian] *of the poor for the said parish*, &c. *to omit putting the badge upon the coat* [or *gown*, if a female] *of the said* C D, *and to excuse his* [or *her*] *wearing the same, as long as he* [or *she*] *shall continue to behave orderly and decently.*

*Dated this* ——— *day of* ———

## VIII. *Precedents of proceedings under the poor laws.*

Previous to setting forth the forms of proceedings under the poor laws, it is proper to premise a few things, in respect to the general authority of the justices of peace.

First; Some doubts had arisen from the determination of the court of *King's Bench* in the case of the parishes of *Great Charte* and *Kennington*, *Mic.* 16 *Geo.* 2*. whether justices of peace might lawfully act in any case relating to the parishes, *to the rates and taxes whereof they were rated and chargeable;* to remove which doubts it was enacted by 16 *Geo.* 2. *c.* 18, that it shall be lawful for every justice of the peace within his jurisdiction to execute every thing appertaining to his office, so far as the same relates to the laws concerning the poor, vagrants, highways, or parochial taxes or rates, notwithstanding such justice is rated or chargeable with the taxes within such parish or place affected by such act of such justice. *s.* 1.

But it is provided that this act shall not authorise any justice for any county or riding at large, to act in the determination of *any appeal to the quarter sessions* for any such county or riding from any order or thing relating to the parish or place where such justice is so charged. *s.* 3.

And accordingly in the case of the *K.* v. *Yarpole*, *Mic.* 21 *Geo.* 3. it was objected against an order of sessions made on an appeal from an order of removal, that *three of the justices who voted* and joined in such order of sessions, *were rated* in one of the contending parishes; and it was generally admitted, that the order of sessions could not be supported. 4 *Term Rep.* 71.

Secondly; The stat. 43 *Eliz.* and many other acts require that one of the acting justices should be of the quorum, and the defect of setting that forth in the warrant, order, or abjudication, was heretofore held to vitiate the proceeding; but now by 26 *Geo.* 2. *c.* 27. no act, order, adjudication, warrant, indenture of apprenticeship, or other instrument done or executed by two or more justices, which doth not express that one or more of them is of the quorum (although the statutes respectively require that one of the justices shall be of the quorum) shall be impeached, set aside, or vacated for that defect only.

And by 7 *Geo.* 3. *c.* 21. in cities, boroughs, towns corporate, franchises and liberties, which have only one justice of the quorum, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments done or executed

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* In this case an order of removal was quashed, because one of the justices who made the order was an inhabitant of *Great Charte* at the time, and charged to the poor rate there; and the court then said, that no rule of law or reason was more established, than that a judge ought to stand disinterested. 2 *Strange*, 1172. *Burrow's Sett. Cas.* 194.

by two or more justices qualified to act therein, shall be valid, although neither of the said justices shall be of the quorum.

I. FORM OF AN APPOINTMENT* OF OVERSEERS.—SEE P. 673 SUPRA.

Monmouthshire. } *We* F J *and* S J *esqrs. two of his majesty's justices of the peace in and for the said county, one of us being of the quorum, do hereby nominate and appoint* F O *and* S O, *being substantial householders of the parish* [*or township*] *of* ——— *in the said county, to be overseers of the poor of the said parish* [*or township*], *according to the direction of the statute in that case made and provided. Given under our hands and seals the* ——— *day of* ———.

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* In order that the justices may be duly informed what persons are fit to be nominated overseers, they may issue a precept in the following or like form.

Monmouthshire. } To *H C*, yeoman, chief constable of ——, within the said county.

*We* F J, *and* S J, *two of his majesty's justices of the peace in and for the said county* (*one of us being of the quorum*) *do hereby require you the said chief constable, forthwith upon sight hereof, to issue your warrant to all constables, tythingmen, headboroughs, or other officers of every parish, township and village, within your said* ——— *according to the form, or to the effect herein indorsed* [or *hereunto annexed*, if it is so] Given under *our hands and seals the* ——— *day of* ———

The form of the chief constable's warrant to the petty constables.

Monmouthshire. } To the constable of ———

*By virtue of a precept from* F J *and* S J *esqrs, two of his majesty's justices of the peace in and for the said county* (*one whereof is of the* quorum) *to me directed, you are hereby required immediately upon sight hereof to give notice to all and every the overseers of the poor within your constablewick, that they do make out a true and fair list in writing of a sufficient number of substantial householders within their respective districts, and deliver in the same to the said justices, and others his said majesty's justices of the peace, in and for the said county, at* ——— *in* ——— *in the said county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the forenoon of the same day, in order that out of the said list the said justices may appoint other overseers of the poor, according the directions of the statute in that*

II. The form of the poor's rate.—See p. 713. supra.

*A rate and assessment of nine-pence in the pound upon every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods, within the parish of —— in the county of ——, for and towards the necessary relief of the poor of the said parish, and for the other purposes in the several acts of parliament mentioned relating to the poor, being the first rate for the present year 1794; made and assessed by us whose hands are hereunto subscribed, churchwardens and overseers of the poor of the said parish, the —— day of ——* 1794.

A B } Churchwardens.
C D }
A B } Overseers of the poor.
C D }

| Persons rated. | Premises assessed. | At what sum rated. | Assessment. |
|---|---|---|---|
| A. B. | House. | 10*l.* | 7*s.* 6*d.* |

*Note.* By the statute 43 *Eliz. c.* 2. s. 1, the said rate and assessment is to be made with the consent of two justices (one whereof is of the quorum), dwelling in or near the parish or division.

And the form of such consent and allowance may be as follows:

*We F J and S J, esqrs, two of his majesty's justices of the peace in and for the said county of M, (one whereof is of the quorum) do hereby consent unto, and allow of this assessment.* Witness our hands the —— day of ——

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*case made and provided. And be you then there to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand the —— day of —— in the year of our Lord——*

——, high constable.

III. Form of an order to seize the goods and receive the rents of the lands of parents or husbands, who run away from their families.—See p. 785 supra.

Monmouthshire, to wit. { To the churchwardens and overseers of the poor of the parish of ——— in the said county of ———

*Whereas C W and F W, churchwardens, and F O and S O, overseers of the poor of the said parish of ——— have made complaint unto us F J and S J, esqrs. two of his majesty's justices of the peace in and for the said county of ——— that O O, late of the said parish of ——— yeoman, hath run away from his place of abode, at ——— in the parish aforesaid, into some other county or place unknown, leaving O O his wife, and A O and D O his infant children upon the charge of the parish of ——— aforesaid, being the place of their last legal settlement; and that he the said O O hath an estate consisting of* 50 *acres of land* [or as the case is] *situate at ——— which should ease the said parish of their said charge. And whereas we the said justices have duly examined into the cause and circumstances of the said complaint, as well upon oath as otherwise, and it doth appear unto us, and we do adjudge that the said complaint is true. These are therefore to authorize you the said churchwardens and overseers of the poor of the parish of ——— aforesaid, to take and seize so much of the goods and chattels, and to receive so much of the annual rents and profits of the lands and tenements of him the said O O, situate at ——— aforesaid, as shall amount to, or be sufficient to raise and pay the sum of ——— * which we do hereby order and direct you to receive for and towards the discharge of the said parish, for the providing for and bringing up of his said wife and children; and you are hereby required to attend at the next quarter sessions of the peace to be holden for the said county of ——— in order that this order may be then and there confirmed according to the statute in that behalf made and provided. Given under our hands and seals this ——— day of ———*

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* The author of this work feels particularly gratified, that in this and many other instances, and in particular in his form of conviction, under the then correctness of his precedents, has been established by the opinion of the court of King's Bench. For in the case of *Stable* v. *Dickson*, Hil. Ter. 45 Geo. 3, where the justices had adopted the precedent in *Burn's* Justice, last edition, vol. 3, p. 980, to seize and receive the rents and profits of the lands indefinitely, The court held the precedent to be bad, and that the order ought only to extend to a specific sum of money, otherwise under such a warrant, if a man had 5000l. a year, they might seize the whole when the actual burden was not 5l. and Lord Ellenborough expressly said, that the order must specify a definite sum. 6 *East's Rep.* 163. 2 *Smith's Rep.* 278.

IV. Form of a summons for non-payment of the poor's rate.—See p. 790 supra.

Summons for non-payment of poor's rate.

Monmouthshire. { To O O of the parish of —— in the said county, yeoman.

*We A B and C D, esqrs, two of his majesty's justices of the peace in and for the said county, one of us being of the quorum, do hereby summon and require you the said O O personally to be and appear before us, at the house of —— in —— in the said county, on —— the —— day of —— at the hour of —— in the forenoon of the same day, to shew cause why you do refuse to pay the rate or assessment on you made for the relief of the poor of the said parish for this present year. Given under our hands and seals the —— day of —— in the year of our Lord ——*

Form of a warrant to distrain for non-payment of the poor's rate.

Warrant of distress.

Monmouthshire. { To the churchwardens and overseers of the poor of the parish of —— in the said county.

*Whereas in and by a rate and assessment, made, assessed, allowed, and duly published according to the statute in that case made and provided, P P an inhabitant and occupier of an house in the said parish of —— was duly rated and assessed, for and towards the necessary relief of the poor of the said parish for this present year, at the sum of —— shillings; and whereas it duly appeareth unto us, F J and S J, esqrs, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, as well upon the oath of P R overseer of the poor of the said parish, as otherwise, that the said sum of —— shillings hath been lawfuly demanded by the said PR, and that the said PP hath neglected and refused, and still doth neglect and refuse to pay the same; and whereas the said P P having appeared before us the said justices in pursuance of our summons for that purpose issued, hath not shewn to us any sufficient cause why the said rate or assessment should not be paid [or, and whereas it hath been duly proved to us upon oath, that the said P P hath been duly summoned to appear before us the said justices, to shew cause why he hath neglected and refused to pay the said rate or assessment; but he the said —— hath neglected to appear according to such summons]: These are therefore to authorize and require you forthwith to distrain the goods and chattels of him the said P P, and if within the space of —— days next after such distress by you taken, the said sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then you are hereby further authorized and required to sell the said goods and chattels so by you distrained, and out of the money arising by such sale, to detain the sum of —— and also*

*your reasonable charges of taking, keeping and selling the said distress, rendering to him the said P P the overplus on demand; and if sufficient goods and chattels of him the said P P cannot be found, whereon the said sum of ——— and the charges of taking, keeping and selling the said distress may be levied, then you are to certify the same unto us, to the end that such further proceedings may be thereon had as the statutes in that behalf made and provided do direct and require. Given under our hands and seals this ——— day of ———*

## V. Precedents relating to the relief of the poor.

### 1. Oath of a poor person requiring relief.

*P P of ——— in the parish of ——— in the county of ——— maketh oath and saith, that he is very poor and impotent, and not able to provide for himself and family, and that on ——— last he did apply for relief to the parishioners of the said parish, (at a vestry [or a public] meeting)* [or *to A B and C D, two of the overseers of the poor of the said parish*] *and was by them refused to be relieved.*

P P.

Sworn before me one of his majesty's justices of the peace in and for the said county of M, the ——— day of ——— J P.

### II. Summons of the overseers.

Monmouthshire, to wit. } To A B and C D, two of the overseers of the poor of the parish of ——— in the said county.

*Whereas oath hath this day been made before me J P esq. one of his majesty's justices of the peace in and for the said county of M, by P P of your parish, that he the said P P is very poor and impotent, and not able to provide for himself and his family, and that he the said P P did on ——— last apply to the parishioners of your said parish at a vestry (or public meeting)* [*or to you the said A B and C D, overseers of the poor of the said parish*] *and was by you refused to be relieved: These are therefore to require you the said A B and C D, to be and appear before me on ——— next, at the house of ——— in ——— in the said county, at the hour of ——— in the forenoon of the same day, to shew cause why relief should not be given to the said P P. Given under my hand and seal the ——— day of ——— in the ——— year.*

### III. Order for relief.

Monmouthshire, to wit. } To the churchwardens and overseers of the poor of the parish of ——— in the said county, and to every of them.

*Whereas oath hath been made before me J P, esq. one of his ma-*

*jesty's justices of the peace in and for the said county of M, by P P of your parish, that he the said P P is very poor and impotent, and not able to work; and that he the said P P did on ——— last apply for relief to the parishioners of the said parish of ——— at a vestry (or public meeting, or to A B and C D, two of the overseers of the poor of the said parish) and was by them refused to be relieved: And whereas the overseers of the poor of the said parish have been duly summoned by me to shew cause why relief should not be given to the said P P, and they the said overseers have appeared before me in pursuance of my said summons, but have not shewn any sufficient cause to the contrary [or have neglected to appear before me in pursuance of my said summons] I do therefore hereby order you the said churchwardens and overseers of the poor of the said parish of ——— or some or one of you to pay unto the said P P, weekly and every week, upon the* Monday *in each and every week, the sum of ——— for and towards his support and maintenance, until such time as you shall be otherwise ordered according to law to forbear the said allowance. Given under my hand and seal at ——— in the said county, the ——— day of ——— in the year of our Lord.*

IV. General form of a contract for the maintenance of the poor.

*It is contracted and agreed this ——— day of ——— by and with the consent of the major part of the inhabitants of the parish of ——— in the county of M, (at a public meeting for that purpose assembled, upon usual notice thereof first given) between A B and C D churchwardens, and E H and F H overseers of the poor of the said parish of the one part, and F F in the said parish, yeoman, of the other part; that he the said F F shall and will, during the space of one whole year, to commence from ——— now next ensuing, at his own proper costs and charges, in the house in which he now dwelleth* [or as the case is] *find, provide and allow unto all such poor people as shall be lawfully intitled to relief and maintenance from the said parish, and shall be there brought unto him by the churchwardens or overseers of the poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, clothing, employment, and other things necessary for their keeping and maintenance; and that in consideration thereof, the said churchwardens and overseers of the poor, and their successors respectively, shall pay or cause to be paid to the said F F, the sum of ——— in equal proportions, and the said F F to have moreover and take unto himself the benefit of the said poor people's work, labour and service during the said term. In witness whereof, the parties to these presents have hereunto set their hands the day and year first above mentioned.*

V. GENERAL FORM OF AN AGREEMENT BETWEEN TWO OR MORE PARISHES TO UNITE FOR THE PURPOSE OF PROVIDING A POOR-HOUSE AND MAINTAINING THE POOR THEREIN.

*It is agreed this ———— day of ———— by and between A B and C D churchwardens and overseers of the parish of ———— in the county of M, and F H and G H churchwardens and overseers of the poor of the parish of ———— in the same county, by and with the consent of the major part of the parishioners* [*or inhabitants*] *of their respective parishes, at public meetings for that purpose duly assembled, and with the approbation of J P esq. one of his majesty's justices of the peace dwelling in the said parish of* ———— [*or near to the said parishes of* ———— as the case is] *of the one part, and F F of the parish of* ———— *in the said county, yeoman, of the other part: That the said respective parishes of* ———— *and* ———— *shall unite in purchasing* [*or in hiring or taking,* as the case is] *a certain house, situate at* ———— *in the said parish of* ———— *now in the occupation of him the said F F, for the lodging, keeping and maintaining of the poor of the said several parishes; and that he the said F F shall and will during the space of one whole year to commence from* ———— *now next ensuing, at his own proper costs and charges, in the said house, find, provide and allow, &c.* [proceeding as in the last.]

The assent of the justice may be indorsed on the above agreement in the following form.

*I J P, esq. the justice of peace mentioned in the within written agreement, do hereby consent unto, allow, and approve of the within written contract. Given under my hand and seal the* ———— *day of* ————

Note. The above contracts may contain such special covenants and clauses, for the better keeping and ordering of the poor, as may be thought requisite; and in this respect the rules established by the stat. 22 *Geo.* 3, in regard to poor houses in incorporated districts, may suggest many particulars.

VI. ORDER FOR THE ADMISSION OF A PAUPER INTO THE POOR-HOUSE.

To A B master of the poor-house at ———— in the county of M.

*You are hereby ordered and required to receive P P, a poor and impotent person belonging to the parish of* ———— *in the county of* ———— *into the said poor-house, and to accommodate and provide for such person in a proper manner, according*

*to the rules and establishment of the said house. Given under my hand this —— day of ——*

A B { Overseers of the poor
C D { of the said parish of ——

VII. Allowance of Overseers' Accounts.

Monmouthshire. { *Perused, inspected, and allowed (having been first signed and verified on oath, by C C and S C churchwardens, and F O and S O overseers of the poor) by me J P, esq. one of his majesty's justices of the peace in and for the said county of M, the —— day of ——*

*J P:*

VIII. Indictment against an Overseer for refusing to pay a Pauper a weekly Sum of Money, contrary to an Order of two Justices. See *Dogherty's Cr. Cir.* 513.

Monmouthshire to wit. { *The jurors of our lord the king upon their oath present, that S P of —— in the parish of —— in the county of M, spinster, before the making of the order of justice, hereinafter mentioned, to wit, on the —— day of —— in the year of our Lord —— at —— in the parish of —— aforesaid, was delivered of a female bastard child, which said bastard child, at the time of the making of the order, and also at the time of the contempt and disobedience hereinafter mentioned, was, and yet is living, to wit, at —— in the parish of —— aforesaid; and the jurors aforesaid, upon their oath aforesaid, do further present, that the said S P, having such bastard child as aforesaid, she the said S P on the same day and year aforesaid* [or as the fact is] *became and was very poor and impotent, and not able to provide for herself and her said bastard child; and the said S P so being very poor and impotent, and not able to provide for herself and her said bastard child as aforesaid, she the said S P afterwards, to wit, on the same day and year aforesaid, at —— in the parish of —— aforesaid, applied to the then overseers of the poor, of and for the parish of —— aforesaid, for relief in the premises; and that the then overseers of the said poor, and each and every of them, then and afterwards, did wholly neglect and refuse to relieve the said S P, so being very poor and impotent as aforesaid, to wit, at the parish of —— aforesaid: and the jurors aforesaid, upon their oath aforesaid, do further present, that the said S P so being very poor and impotent, and unable to provide for herself and her said bastard child, after such neglect and refusal as aforesaid, to wit, on the same day and year aforesaid, at the parish of —— aforesaid, appeared before H R clerk, and*

*W W esq. then being two of the justices of our said lord the king, assigned to keep his peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and then and there before the said H R and W W, being such justices as aforesaid, took her corporal oath, and did depose, that she the said S P was very poor and impotent, and unable to maintain herself and her said child, and that she the said S P had then lately applied for relief to the then overseers of the poor of the said parish, and was by them the said overseers refused to be relieved on that occasion: and the jurors aforesaid, upon their oath aforesaid, do further present, that the said H R and W W, being such justices as aforesaid, did thereupon afterwards (to wit) on the same day and year aforesaid, at the parish of ——— aforesaid, duly summon the said overseers to appear before them, the said H R and W W, being such justices as aforesaid, and shew cause why relief should not be given to the said S P in the premises; and that the said then overseers having been so summoned as aforesaid, did before the said H R and W W, being such justices as aforesaid, refuse to relieve the said S P on that occasion, and did not shew to the said justices any sufficient cause why relief should not be granted to the said S P; and that the said H R and W W, being such justices as aforesaid, did thereupon afterwards, to wit, on the same day and year aforesaid, at the parish of ——— aforesaid, make their certain order in writing, signed with the proper hands, and sealed with the seals of them the said H R and W W so being such justices as aforesaid; whereby, after reciting that the said S P had made oath, before them the said H R and W W two of his majesty's justices of the peace in and for the said county, that she the said S P was very poor and impotent, and unable to provide for herself and her bastard child, and that she the said S P had then lately applied for relief to the overseers of the poor of the said parish, and was by them refused to be relieved; and after reciting also, that the overseers of the poor of the said parish had been duly summoned to shew cause why relief should not be given to the said S P, but had refused to relieve her with sufficient relief, and had not shewn any sufficient cause why relief should not be granted to her, they the said H R and W W did order the then churchwardens and overseers of the poor of the said parish, or some or one of them, to pay unto the said S P the sum of ——— weekly and every week, upon the* Monday *in each and every week, for and towards the support and maintenance of her and her said bastard child, until such time as they should be otherwise ordered according to law to forbear the said allowance, and the jurors aforesaid, upon their oath aforesaid, do further present that one O O, late of the parish of ——— aforesaid, in the said county of M, yeoman, on the said ——— day of ——— in the said year of our Lord*

*——— and long before and afterwards, was one of the overseers of the poor of and for the parish of ——— aforesaid, having duly accepted the said office, to wit, at the parish of ——— aforesaid, and that it was then and there the proper office and duty of the said O O as such overseer as aforesaid, well and faithfully to execute and obey the said order of the said H R and W W so made as aforesaid, according to the exigency thereof; and the jurors aforesaid, upon their oath aforesaid, do further present that the said order of the said H R and W W so made as aforesaid, afterwards, to wit, on the same day and year aforesaid, at the parish of ——— aforesaid, in the county aforesaid, was duly shewn and delivered to the said O O, so being such overseer as aforesaid, to be by him well and faithfully executed and obeyed in all things according to the exigency thereof, and according to the said office and duty of the said O O, as such overseer as aforesaid; and the jurors aforesaid, upon their oath aforesaid, do further present, that the said O O, so being such overseer as aforesaid, and so having seen and received the said order as aforesaid, afterwards, to wit, on the said ——— day of ——— in the said year of our Lord ——— and continually from thenceforth, for and during all such time as the said O O continued in his said office of overseer of the poor of the parish of ——— aforesaid, unlawfully, wilfully, obstinately, and contemptuously did neglect and refuse, and hath wholly hitherto neglected and refused, to pay unto her the said S P the sum of ——— or any part thereof, weekly and every week, upon the* Monday *in each and every week, for and towards the support and maintenance of her the said S P and her said bastard child, as by the said order he the said O O, as such overseer as aforesaid, was required to do; and the same and every part thereof is still wholly due and unpaid to the said S P, although she the said S P, whilst the said O O remained and continued as such overseer as aforesaid, to wit, on the same day and year aforesaid, and on divers other days and times, as well before as after the ——— day of the same month of ——— at the parish of ——— aforesaid, requested him the said O O to pay her the same; and although he the said O O hath not at any time whatsoever hitherto been otherwise ordered according to law, to forbear the said allowance, contrary to the said office and duty of him the said P P in that behalf, to the manifest hindrance and subversion of justice, to the great damage and impoverishment of the said S P and her said child, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.*

Note. An indictment for refusing to serve the office of overseer, may be framed according to the precedent for refusing to serve the office of constable, inserted in vol. i. under the title CONSTABLE.

*Popery*. See PAPISTS.

*Popular actions*. See INFORMATION QUI TAM.

*Post horses*. See STAMPS.

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# PORTERAGE, RATES OF.

BY 39 *Geo.* 3, *c.* 58, it is enacted *that from and after the fifth day of July* 1799, no innkeeper, warehousekeeper, or other person, to whom any box, basket, package, parcel, truss, game, or other thing whatsoever, *not exceeding fifty-six pounds weight*, is brought by any stage waggon or cart, or any public stage coach or carriage, or any porter or other person employed by such innkeeper, warehousekeeper, or other person in the porterage or delivery of any such box, &c. within the cities of *London* and *Westminster*, and the borough of *Southwark*, and the suburbs and liberties thereof respectively, and other parts contiguous thereto, *not exceeding the distance of half a mile from the end of the carriage pavement in the several streets and places* within the said cities, borough, and liberties, shall ask or demand, or receive or take, in respect of such porterage or delivery, any greater rate or price than the several rates or prices hereinafter mentioned; (that is to say,)

Rates.

For any distance not exceeding a quarter of a mile, the sum of three pence:

For any greater distance than a quarter of a mile, but not exceeding *half a mile, the sum of four pence:*

For any greater distance than half a mile, but not exceeding *one mile, the sum of six pence:*

For any greater distance than one mile, but not exceeding *one mile and a half, the sum of eight pence:*

For any greater distance than one mile and a half, *but not exceeding two miles, the sum of ten pence*; and so in like manner the additional sum of three pence for every further distance not exceeding half a mile. *s.* 1.

Penalty on taking more than the rates.

And if any porter or other person employed in the porterage or delivery of such boxes, &c. as aforesaid, shall ask, demand, receive or take, in respect of such porterage or delivery, any greater sum or sums than the rates or prices herein before fixed, such porter or other persons shall for every offence forfeit not exceeding twenty shillings nor less than five. *s.* 2.

And before any such box, &c. is sent from the inn, warehouse

or other place to which the same is brought or conveyed, *there shall be made out and given to the porter* or other person employed in the delivery thereof, *a card or ticket, whereon shall be distinctly printed,* written, or marked *the name and description of the inn,* warehouse, or other place *from whence the same is sent, and the sum due for the carriage thereof, and also the sum due for the porterage or delivery thereof,* according to the rates and prices aforesaid, *and the christian name and surname of the porter* or other person employed in such delivery, *which card or ticket shall be delivered by the porter* or other person employed as aforesaid, *at the same time and together with such box, &c. and if any such box, basket,* or other article *shall be sent from any inn,* warehouse, or other place *without such card or ticket* as aforesaid, *every such innkeeper,* warehousekeeper, or other person *shall for every such offence forfeit and pay any sum not exceeding forty shillings nor less than five: and any porter* or other person employed in the delivery of any such box, basket or other article, *who shall not at the time of such delivery leave therewith such card or ticket* as aforesaid, or who shall wilfully alter, obliterate, or deface any thing written or expressed thereon, *shall for every such offence forfeit and pay the sum of forty shillings;* and if any such porter or other person shall upon the delivery of such box, basket, or other article, ask demand, take or receive any larger sum for the carriage of such article than is written or expressed as aforesaid, every such porter or other person shall for every offence forfeit and pay twenty shillings. s. 3.

Tickets to be made out and given to the porters.

And every box, &c. brought to any inn, warehouse, or other place, by any public stage coach or carriage other than stage waggons, for the purpose of delivery within the limits aforesaid, (except where the same shall be directed to be left till called for,) *shall be delivered according to the direction thereof within six hours after the arrival of any such box, basket,* or other article at such inn, warehouse, or other place, *unless such arrival shall be between the hours of four in the evening and seven in the morning,* and in that case every such delivery shall be made within six hours after such hour in the morning, *and in default thereof every innkeeper,* warehousekeeper, or other person, to whose inn, warehouse, or other place such box, basket, or other article shall be brought as aforesaid, *shall forfeit* and pay for every offence *not exceeding twenty shillings nor less than ten,* s. 4.

Parcels brought by coaches to be delivered within certain periods.

And every box, &c. brought to any inn, warehouse, or other place, by any public stage waggon for the purpose of delivery within the limits aforesaid, (except where the same shall be directed to be left till called for,) shall be delivered according to the direction thereof within twenty-four hours after the arrival of any such box, basket, or other article at such inn, warehouse, or other place, and in default thereof every inn-

Parcels brought by waggons to be delivered within a certain time.

keeper, warehousekeeper, or other person, to whose inn, warehouse, or other place such box, basket, or other article shall be brought as aforesaid, shall forfeit and pay for every offence not exceeding twenty shillings nor less than ten shillings. *s.* 5.

Parcels directed to be left till called for, to be delivered to persons to whom the same shall be directed, on payment of carriage and warehouse-rent.

And every such box, &c. brought to such inn, warehouse, or other place as aforesaid, which shall be directed to be left till called for, shall, upon the demand of the person properly authorized to receive the same, *be delivered to such person without any charge or demand whatsoever, other than what is justly due for the carriage thereof, and the additional sum of two pence for the warehouse-room thereof;* and if not delivered to such person upon such demand, or any charge other than as aforesaid be made or received in respect thereof, every innkeeper, warehousekeeper, or other person, to whose inn, warehouse, or other place such box, basket, or other article shall be brought as aforesaid shall forfeit and pay for every offence or overcharge not exceeding twenty shillings nor less than ten. *s.* 6.

If not sent for till the expiration of one week warehouse rent to be charged.

Provided that if such box, &c. so directed to be left till called for be not sent for before the end of one week after the same is brought to such inn, warehouse, or other place such innkeeper, warehousekeeper, or other person may charge the further sum of one penny for the warehouse-room thereof, and so if not sent for before the end of the second or any subsequent week to charge the further sum of one penny weekly, *s.* 7.

If any such box, &c. brought to such inn, which is not directed to be left till called for, *shall, before the same is sent for delivery from such inn,* warehouse or other place *be demanded by any person properly authorized* to receive the same, such box, basket, or other article shall be thereupon delivered to such person so demanding the same; *and such innkeeper may charge and take the sum justly due for the carriage thereof, and two pence for the warehouse-room thereof;* but if not delivered to such person upon such demand, or any charge other than as aforesaid be made, every innkeeper, warehousekeeper, or other person, to whose inn, warehouse, or other place such box, or other article shall be brought, shall pay for every offence *not exceeding twenty shillings nor less than ten.* s. 8.

Preventing misbehaviour of porters.

And, for the preventing the misbehaviour of persons employed in the porterage or delivery of such boxes, &c. *upon complaint made of any non-delivery, neglect, misconduct, or misbehaviour* in such employment to any justice of the peace within whose jurisdiction the offence has been committed, or the offender shall be or reside, such justice *may grant a warrant to bring before him the person against whom such complaint shall be made,* and upon proof, made upon oath, (which oath such justice is hereby empowered to administer,) of any such non-delivery, &c. of such porter or other person, to impose a fine or penalty *not exceeding twenty shillings nor less than five.* s. 9.

Recovery for rates of porterage.

And if any person to whom any such box, &c. shall be direct-

ed, *shall, upon delivery, neglect or refuse to pay* the money due for the carriage thereof, and porterage or delivery, according to the rates aforesaid, or the warehouse-room, as the case may be, *any justice of the peace* within whose jurisdiction such neglect or refusal shall be made, or the person charged with such offence shall reside, may upon complaint thereof made, *grant a warrant to bring before him the person against whom such complaint shall be made, and* upon proof upon oath, (which oath such justice is hereby empowered to administer,) *to award reasonable satisfaction to the party grieved, for his damage and costs, and for his loss of time in recovering the same*, and on non-payment, by warrant, to levy the same by distress and sale of the goods and chattels, rendering the overplus, if any there be, after deducting the charges of making the same. *s.* 10.

Information to be laid within a certain period.

Provided that no person shall be prosecuted for any offence against this act, *unless information be given* to a justice of the peace *within fourteen days* next after the commission. *s.* 11.

Not to authorize the employment of any porter contrary to the usage of the city of London.

This act shall not extend to authorize the employment of any porter or other person in delivery of parcels within the city of *London* contrary to the laws and usages of the said city. *s.* 12.

Recovery of penalties.

And, for the recovery *of the penalties and forfeitures* under this act, be it further enacted, one or more justice or justices of the peace within whose jurisdiction any offence or offences against this act shall be committed, or the person charged with such offence shall reside, upon complaint or information *may summon the party or parties accused, and the witnesses on either side*, to appear at a certain time and place in such summons to be specified, and upon appearance of the party, or in default thereof, (due proof being made of the service of such summons,) to proceed to hear and determine the matter in a summary way, and upon due proof made of the offence, by confession of the party, or the oath of one or more witness or witnesses, (which oath or oaths the said justice or justices is or are empowered to administer,) to convict the party or parties, and to award the penalties imposed by this act, *together with reasonable costs and charges attending such conviction, and upon non-payment, either immediately or at such time as the said justice or justices shall appoint, not exceeding seven days*, such justice or justices is or are empowered *to issue his or their warrant for apprehending such offender*; and in case such offender shall escape out of the jurisdiction of such justice or justices, any other justice of the peace in such county or place, where such offender shall be found, by indorsement of such warrant, to authorize the execution thereof within the jurisdiction of such justice, and the justice or justices who granted such warrant may, upon the offender being brought before him or them, *commit such offender to some public prison or house of correction* of the city, county, or place in which such offence shall have been committed, or such offender shall have resided, there to remain without bail or mainprise *for any term not exceeding one*

*calendar month or less than fourteen days* from the day of every such commitment, unless the sum mentioned in every such warrant of commitment be sooner paid. *s.* 13.

Enforcing attendance on witnesses.

And any person or persons summoned as a witness or witnesses to give evidence touching any matter contained in this act, *and shall have had a reasonable sum of money paid or tendered to him for his loss of time and expences*, and shall neglect or refuse to appear without a reasonable excuse, to be allowed of by such justice or justices, *every such person shall forfeit or pay for every such offence not exceeding forty shillings nor less than twenty*, to be levied and paid as herein before directed with respect to other penalties; or if *any person summoned* as a witness to give evidence as aforesaid shall appear *but shall refuse to answer any lawful questions, such justice or justices may commit such person* to some prison or house of correction of the city, county, or place within the jurisdiction of such justice or justices, *for any time not exceeding fourteen days* from the time of every such commitment. *s.* 14.

And the justice or justices before whom any offender shall be convicted shall cause the said conviction to be made out in the following form of words, or in any form of words to the same effect: (that is to say,)

Form of conviction.

To wit. { 'BE it remembered, that on this day of
' in the year of his majesty king
' *A. B.* is convicted before me *(or us)* One
'*(or* two) of his majesty's justices of peace for the city of *London*, '(*or* for the city and liberty of *Westminster*, *or* for the county of ' *as the case may be*,] for that the said *A. B.* on the ' day of now last past did, contrary to the 'statute in that case made and provided [*here state the offence* '*against the act*]; and I (*or* we) do declare and adjudge, that the 'said *A. B.* hath forfeited the sum of of lawful money of '*Great Britain* for the offence aforesaid. Given under my hand 'and seal, (*or* our hands and seals,) the day and year aforesaid.' *s.* 15.

And the said justice or justices shall certify the same to the next general or quarter sessions of the peace to be holden for the city, county, liberty, or place wherein such conviction was had, to be filed amongst the records thereof, and such conviction shall be good and valid, and shall not be quashed, set aside, or judged void or insufficient for want of form only, and shall not be removed by *certiorari* into the court of king's bench, but shall be final. *s.* 15.

Allowing an appeal to the quarter sessions.

All persons who shall think themselves aggrieved by the judgment or determination of any such justice or justices may appeal to the next general or general quarter sessions of the peace, unless such next general or general quarter sessions shall happen to be holden within six days next after any such conviction, and in such case may appeal to the second general or general quarter sessions of the peace which shall be holden for any such city, liberty, county, or place next after any such conviction, but no ap-

peal shall be received, unless the appellant or appellants shall first enter into a recognizance with two sufficient sureties, before such justice or justices so convicting as aforesaid, in the sum of ten pounds each, to appear and prosecute such appeal with effect; and the justices at such general or general quarter sessions are on every such appeal and on reasonable notice given to the other party, finally to hear and determine the matter of every such appeal, and to make such order and to award such costs therein as they in their discretion shall see meet, and which determination shall be final and conclusive to all parties, and no *certiorari* shall be allowed.

Application of penalties.

One moiety of the penalties shall, when recovered, go to the person or persons who shall prosecute to conviction, and the other moiety to the poor of the parish in which the offence shall be committed. *s.* 17.

Limitation of actions.

No person shall be sued or prosecuted for any thing done in execution of this act after six months from the time when the offence was committed, and every suit shall be brought in the city, county, or place where the offence was committed, and not elsewhere; and every person so sued may plead the general issue (not guilty), and may give this act and the special matter in evidence; and if a verdict be for the defendant or defendants, or if the plaintiff become nonsuit or discontinue, or if judgment be given upon a demurrer the defendant or defendants shall receive double costs, and have the like remedy as in other cases for the recovery thereof *s.* 18.

Public act.

This act shall be deemed a public act, and taken notice of as such without specially pleading the same. *s.* 19.

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# POST OFFICE.

IT shall be lawful for his majesty's postmaster general, and his deputy, for the use of his majesty to take for the post and conveyance of all letters and packets which he shall convey, carry or send, the rates hereinafter mentioned, the same being rated by the letter or by the ounce, 41 *Geo.* 3, *sess.* 2, *c.* 7. 45 *Geo.* 3, *c.* 11.

*Table of the Rates of Postage.*

For the conveyance of letters by THE GENERAL POST, not exceeding 15 miles within Great Britain, single letter, 4d. double, 8d. treble, 1s. and for every ounce, 1s. 4d. and so in proportion.

——— above 15 and not exceeding 30 miles, single letter, 5d. double, 10d. treble, 1s. 3d. ounce, 1s. 8d.

——— above 30 and not exceeding 50 miles, single letter, 6d. double, 1s. treble, 1s. 6d. ounce, 2s.

Conveyance of letters, above 50 and not exceeding 80 miles, single letter, 7d. double, 1s. 2d. treble, 1s. 9d. ounce, 2s. 4d.

——— above 80 and not exceeding 120 miles, single letter, 8d. double, 1s. 4d. treble, 2s. ounce, 2s. 8d.

——— above 120 and not exceeding 170 miles, single letter, 9d. double, 1s. 6d. treble, 2s. 3d. ounce, 3s.

——— above 170 and not exceeding 230 miles, single letter, 10d. double, 1s. 10d. treble, 2s. 6d. ounce, 3s. 4d.

——— above 230 and not exceeding 300 miles, single letter, 11d. double, 1s. 10d. treble, 2s. 9d. ounce, 3s. 8d.

——— and for every 100 miles above 300 miles a further sum for every letter, viz. single letter, 2d. double, 4d. treble, 6d. ounce, 8d.

——— or, if such distance above 300 measured miles *shall not amount* to 100 miles, the like further rates are to be paid.

And when the distance above 300 measured miles shall exceed 100 miles, and so progressively for any like excess, of distance of 100 miles, the like further sum for every single letter, 2d. double, 4d. treble, 6d. ounce, 4d.

Ireland. Between Ireland, Holyhead, and Milford, by packet boats, over and above all other rates, *single* letter, 2d.

Between *Port Patrick* in *Scotland*, and *Donaghadee* in *Ireland*, by packet boats, over and above all other rates, *single* letter, 2d.

Isle of Man. Between *Great Britain* and the *Isle of Man* by packet boats, over and above all other rates, *single* letter, 3d.

Guernsey and Jersey. Between *Great Britain* and the islands of *Guernsey* and *Jersey*, over and above all other rates, *single* letter, 3d.

And by 46 *Geo.* 3. *c.* 73,* for the conveyance of letters by packet boats from or to *Falmouth*, or from or to any other place, to or from *Gibraltar* (besides the other rates now payable) there shall be paid the following rates, viz. for every single letter, 1s. 9d. double, 3s. 6d, treble, 5s. 3d. ounce, 7s.

And for the conveyance of all letters and packets that shall be carried by packet boats from or to the said port of *Falmouth*, or from or to any other convenient port to or from the island of *Malta* (over and above all other rates) for every single letter, 2s. 1d. double, 4s. 2d. treble, 6s. 3d. ounce, 8s. 4d.

Rates for letters conveyed overland from or to Gibraltar and Malta. And for the conveyance of every single letter (not first conveyed by packet boats) sent from or to *Gibraltar*, to or from *Malta*, 6d. double, 1s. treble 1s. 6d. ounce, 2s.

Between *Great Britain* and any port in his majesty's *West*

* This scale of the present rates of postage is taken from the post office table, grounded upon the above statutes, and the public have the option of paying or not, upon the putting in of any letters, for parts within his majesty's dominions; but with all letters for parts out of his majesty's dominions, the full postage must be paid at putting in, without which they cannot be forwarded. *Post Office Rules.*

*India* islands or *North America*, the packet postage over and above all other rates to and from *Falmouth**, *single* letter 1s. 1d.

For the postage of every letter or packet of letters in any part of his majesty's dominions directed to, or coming from on board of any ship, over and above the rates above mentioned, except such are conveyed in sealed bags under the act of 39 *Geo.* 3. c. 36,† *single* letter, 1d. Ship letters.

For every letter or packet coming from on ship board for the town where landed, or the delivery thereof, 1d. with the 1d. paid to the master, mariner or passenger bringing the same, being for every such letter or packet, except as before excepted, *single* letter, 2d.

Letters or packets conveyed outwards in sealed bags under the act of 39 *Geo.* 3. *c.* 36 are chargeable with half a rate of packet postage.

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* In addition to which, these letters are chargeable with the inland rates of postage, according to the distance to and from *Falmouth*; and all letters for *North America*, must pay at the office where they are put in, the inland and package postage, without which they cannot be forwarded. *Post Office Rules.*

† By 39 *Geo.* 3. *c.* 76, it shall be lawful for the postmaster general to collect and receive letters and packets directed to places within his majesty's dominions, also to any the kingdoms and countries beyond the seas, and to forward the same by any vessels that he shall think fit (although not packet boats); and also to take for every letter and packet delivered to him or his deputies for conveyance in manner before specified, not less than one half part of the rates payable for such letters and packets if the same were conveyed by packet boats; and in cases where no rate of postage is established, then as near as can be ascertained, equal to one half of what is now paid for letters sent beyond the seas. *s.* 1.

It shall be lawful for the postmaster general to take for every letter and packet brought by vessels (other than packet boats) in manner before mentioned, from places within his majesty's dominions, and from any countries beyond the seas into *Great Britain*, to be conveyed by inland postage, 4d. for every single letter, and so in proportion in addition to any inland postage; and for the encouragement of the masters of vessels, it shall be lawful for the postmaster general to allow all such masters 2d. a letter or packet upon all such as they shall take on board, provided such letters and packets shall have been delivered to them from the post office; and in like manner, on their arrival from parts beyond the seas, on their delivering unto the deputies of the postmaster general for such place or post town at which they shall arrive, it shall be lawful to pay to such masters 2d. a letter or packet for all such as they shall have on board; provided such letters and packets shall have been regularly delivered unto the said masters by the deputies of the postmaster general, or any other persons authorized by him at the place or post town whence such vessels have sailed. *s.* 2.

And the postmaster general may cause the rates hereby payable to be paid either prior to such letters and packets being forwarded, or on delivery thereof. *s.* 3.

Letters or packets conveyed inwards in addition to the inland postage, *single* letter 4d.

Foreign or distant parts.

| | | | |
|---|---|---|---|
| *America* and the *West Indies* single | 0 | 2 | 0 |
| *France* (single) *via Hambro* | 0 | 1 | 6 |
| *Italy* and *Switzerland* ditto single | 0 | 1 | 6 |
| *Hamburgh* and north of *Europe* single | 0 | 1 | 6 |
| *Holland* single | 0 | 1 | 6 |
| *Spain* (*via Lisbon*) single | 0 | 2 | 4 |
| *Lisbon* (single) | 0 | 2 | 4 |
| *Gottenburg* (single) | 0 | 1 | 6 |

Two penny post.

The postage of every letter or packet passing to and from places within the cities of *London* or *Westminster*, the borough of *Southwark*, and not beyond the limits of the delivery of the general post letter carriers, 2d.

For every letter or packet put into the said post to be forwarded to the general post office, and from thence to be conveyed by the general post, or first passing by the general post and then passing by the two penny post, over and above the general postage, 2d.

For every letter or packet passing to or from any part or place within the district of the twopenny post and not *within* the delivery of the general post letter carriers, 3d.

For every printed newspaper sent to any place within the district of the twopenny post, *beyond the delivery of the general post letter carriers*, provided there shall not be inclosed therein any paper or other thing, nor contain any writing other than the superscription of the name and place of abode of the person to whom the same shall be sent, 1d.

No letter, together with the contents thereof, shall be rated at an higher rate of postage, than as a treble letter, unless the same shall be one ounce in weight; and all letters of the weight of one ounce shall be rated as four single letters; and so in proportion for every quarter of an ounce above the weight of one ounce, reckoning each quarter of an ounce as a single letter. 24 *Geo.* 3. *sess.* 2.

Cross posts, and by or way-letters.

And it shall be lawful for the postmaster-general to set up cross stages, and take for all letters which he shall convey in such cross stages, as also for all by or way-letters, the same rates, in proportion to the distances, as letters conveyed to and from *London*. 9 *Ann.* c. 10. *s.* 10.

And if any deputy-postmaster shall not duly account for all by or way-letters, or shall not on his post-bills mention all the by or way-letters he shall receive, or shall embezzle any such by-letters or packets, such person shall forfeit as the persons herein prohibited setting up other posts*. *s.* 18.

* See s. 17, infra.

Also by 41 *Geo.* 3. *sess.* 2. *c.* 7. The postmaster-general may undertake, at the expence of the revenue of the post office, the conveyance of letters to and from places (not being post towns); and to take such sums for such extra service as shall be mutually agreed upon between the postmaster-general and the inhabitants. *s.* 5.

But nothing herein shall prevent the inhabitants from carrying or employing any person to carry letters to or from the post-town as they have heretofore been accustomed. *s.* 6.

The monies to arise for such extra services shall, after paying the expences, be applied as the present rates. *s.* 7.

The postmaster-general may enter into any agreement with, or take security from, any person applying for that purpose, for idemnifying his majesty in whole or in part, and for such time as the postmaster-general may think necessary, against the expences which may be incurred beyond the rates of postage, by extending the conveyance of letters by post to or from places where such conveyance shall be extended at the request of such persons, and it shall appear doubtful, whether by extending the said conveyance, an additional expence may not be incurred. *s.* 8.

And by 46 *Geo.* 3. *c.* 92, it shall be lawful for the postmaster-general, to undertake, at the expence of the revenue, the conveyance and delivery of letters directed to persons abiding in towns, villages, and places, (not being post towns) from any other towns, villages, and places, (not being post towns) and also the collection and conveyance of letters in and from any towns, villages, and places, (not being post towns) to any other towns, villages, and places, (not being post towns); and to take such sums of money for the use of his majesty, for such extra services, as shall from time to time be agreed upon by and between the postmaster-general and the inhabitants. *s.* 2.

But nothing herein shall hinder the inhabitants from carrying or recarrying or employing any messenger, servant, or other person, to carry or recarry any letters or packets to or from such places. *s.* 3.

Seamen's letters.

By 46 *Geo.* 3. *c.* 92. it shall be lawful to and for every seaman employed in the navy, whilst such seaman shall be actually employed, and not otherwise, to send single letters by the post on his own private concern only, at the rate of one penny only for each letter, the same to be paid upon putting the same into the post office: provided that upon every such letter, the name of the writer, and his class in the ship, shall be superscribed; and provided also, that upon every such letter there shall be written, in the hand-writing of and signed by the officer having at the time the command of the ship, his name and the name of the ship. *s.* 6.

And it shall be lawful for every seaman, whilst actually employed, to receive by the post on his own private concerns only free from postage, single letters; provided one penny for the postage be paid upon putting the same into a post office; and, provided also that every such letter shall be directed to such

seaman, specifying on the superscription thereof the ship to which he shall belong, and provided likewise, that it shall not be lawful for the deputy postmaster of the place to which such letter shall be sent to be delivered, to deliver such letter to any person except the seaman to which such letter shall be directed, or to some person appointed to receive the same, by writing under the hand of the officer having the command of the ship; and nothing herein shall extend to letters sent by or to commissioned officers or warrant officers, midshipmen, or master's mates. *s.* 7.

Soldier's letters, one penny for each, &c.

And it shall be lawful for every serjeant, corporal, drummer, trumpeter, fifer, and private soldier, in the regular forces, militia, fencible regiments, artillery, or royal marines, whilst actually employed in his majesty's service, to send single letters by the post, on his own private concerns only, at the rate of one penny only, the same to be paid when putting the same into the post office: provided, that upon every such letter, the name of the writer and his description shall be subscribed; and provided also, that upon every such letter there shall be written in the handwriting of and signed by the officer having at the time the command of the regiment, corps, or detachment, his name and the name of the regiment, corps, or detachment. *s.* 8.

And may receive letters free from postage, one penny having been paid when put into the post office.

Conditions.

And it shall be lawful for every serjeant, corporal, trumpeter, drummer, fifer, and private soldier whilst actually employed to receive by the post on his own private concerns only, free from postage, single letters; provided 1d. for the postage be paid upon putting the same into a post office; and provided also, that every such letter shall be directed to such serjeant, corporal, trumpeter, drummer, fifer, and private, specifying on the superscription thereof the name of the regiment to which he shall belong; and it shall not be lawful for the deputy postmaster of the town or place to which such letter shall be sent to be delivered, to deliver such letter to any person, except the party to whom such letter shall be directed, or to some person appointed to receive the same, by writing under the hand of the officer having the command of the regiment. *s.* 9.

But nothing herein shall extend to letters sent by or to commissioned officers, or warrant officers. *s.* 10.

Penalty on commanders of ships writing their name on letters not from any seaman, &c.

And if any person, having the command of the ship, vessel, regiment, corps, or detachment, shall wilfully or knowingly write his name upon any letter that is not from any such seaman, serjeant, corporal, trumpeter, drummer, fifer, and private soldier, and on his or their own private concerns only, such commanding officer shall forfeit five pounds. *s.* 11.

Penalty on persons, not having the command of the ship, writing their name on letters, and on addressing letters

And if any person, not having at the time the command of the ship, vessel, regiment, corps, or detachment, shall write his name upon any such letter, in order that the same may be sent at a lower rate of postage than established, every such person shall forfeit five pounds. *s.* 12.

And if any person whomsoever shall knowingly and designedly address a letter to any such seamen, serjeant, corporal, trumpe-

ter, drummer, fifer, and private soldier, which shall be intended for another person, or which shall be concerning the affairs of another person, with intent to evade the payment of the rate of postage, such person shall forfeit five pounds. *s.* 13.

to seamen, &c. intended for other persons, to evade the postage.

If any person whomsoever shall procure any such seaman, serjeant, corporal, trumpeter, drummer, fifer, or private soldier, to obtain the signature of his commanding officer to any letter to be sent by the post, which shall not be on the private concerns of such seaman, serjeant, corporal, trumpeter, drummer, fifer, and private soldier; or if any such seaman, serjeant, corporal, trumpeter, drummer, fifer, and private soldier shall himself obtain the signature of his commanding officer upon any letter which shall not be from him and upon his own private concerns only, in order to avoid the payment of the rates of postage, he shall forfeit five pounds. *s.* 14.

Penalty for obtaining the signature of the commanding officer to letters not on the private concerns of seamen, &c.

One moiety of the said penalties shall be to the use of his majesty, and the other to the person who shall inform and sue for the same, and may be recovered before one justice of the peace for the county or place where the offence shall be committed, either by the voluntary confession of the party, or upon the oath of one witness, and in default of payment it shall be lawful for such justice to commit such offender to the house of correction for (not exceeding one month) or until such forfeiture shall be sooner paid. *s.* 15.

Application of penalties.

Also it shall be lawful for the postmaster-general and his deputy to establish an office in any city or town, and the suburbs thereof, and places adjacent, within *Great Britain*, and to take the same rates for conveyance of letters and packets as may be taken by the twopenny post within *London* and *Westminster*, and *Southwark*.* 5 *Geo.* 3. *c.* 25. *s.* 11. 34 *Geo.* 3. *c.* 17. *s.* 7.

Penny posts in cities and towns.

And when such post offices shall be established in such cities or places, no person whatsoever shall make any collection of letters in or near such city or places, without licence of the postmaster-general, upon pain of incurring the forfeitures by 9 *Ann.* 5 *Geo.* 3. *c.* 25. *s.* 12. 34 *Geo.* 3. *c.* 17. *s.* 7.

By 35 *Geo.* 3. *c.* 28, all letters or packets sent by the cashier of the treasurer of the navy for paying seamen's tickets in the execution of this act, † in manner herein-after directed, shall be sent free of postage; and all letters and packets relating to the execution of this act, that shall be forwarded by the cashier of the treasurer of the navy for paying seamen's tickets, shall be under

Letters from and to the cashier of the treasury of the navy to be free of postage.

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* See sec. 7. of stat. 34 *Geo.* 3. *c.* 17. infra.

* This act, and the stat. 35 *Geo.* 3. *c.* 95, enables petty officers and seamen, non-commissioned officers of marines, and marines; and boatswains, gunners, and carpenters, to allot part of their pay for the maintenance of their wives and families.

covers, with the words, " pursuant to act of parliament thirty-" fifth *George* the third," printed upon the same, and the said cashier shall write his name under the same, and he is strictly prohibited from inclosing or sending under such covers any writing, paper, or parcel whatever, excepting such as shall relate to the execution of this act. *s.* 26.

Merchants accounts, bills of exchange.

All merchants accounts, bills of exchange, invoices, and bills of lading, shall be rated as so many several letters, or by the ounce. 41 *Geo.* 3. *sess.* 2. *c.* 7. *s.* 4.

Bills and letters wrote on the same paper.

Bills of exchange wrote on the same piece of paper with a letter, and also letters to several persons wrote on the same piece of paper, shall be rated as so many distinct letters. 9 *Geo.* 1. *c.* 21. *s.* 51.

Patterns enclosed.

Every packet or cover, containing therein, or having affixed thereto, one or more papers with patterns, or one or more patterns of cloth, silk, stuff, or other goods, or one or more samples of any other sort of thing, not exceeding together an ounce in weight, shall be charged with no higher postage than as a single letter, so as every such packet or cover shall be sent open at the sides, and without any letter or writing, in, upon, or with the same, other than the name of the person sending the same and the place of his abode, and the prices of the articles. 35 *Geo.* 3. *c.* 53. *s.* 9.

Law proceedings.

Every writ and proceeding at law inclosed in a letter, or written on the same piece of paper, with a letter, shall be paid for as a several and distinct letter. 26 *Geo.* 2. *c.* 13. *s.* 7.

Letters to or from the king.

All such letters and packets as shall be sent from or to the king, shall be exempted from postage. 4 *Geo.* 3. *c.* 24. *s.* 1.

Members of parliament.

By 42 *Geo.* 3. *c.* 63. it shall be lawful for each member of the two houses of parliament of the united kingdom to send by the post to places within the said kingdom, free from the duty of postage, during the sitting of any session of parliament, or within forty days before or forty days after any summons or prorogation of the same, any number of letters and packets not exceeding ten in one day, *so as none shall exceed the weight of one ounce*, and so as each be subscribed in manner hereinafter mentioned; and also it shall be lawful for each member of both houses of parliament of the said united kingdom, during the sitting of any session, or within forty days before or forty days after any summons or prorogation of the same, to receive by the post, from places within the said united kingdom, any number of letters and packets not exceeding fifteen in one day, *so as each do not exceed the weight of one ounce*, and be directed to the member at the place where he shall actually be at the time of the delivery thereof, or at his usual place of residence in *London*, or at the house of parliament, or the lobby of the house. *s.* 1.

Franks.

No letter or packet whatsoever, directed by any member of either of the two houses shall be exempted from postage unless the whole superscription shall be of the hand-writing of the mem-

ber, and shall have endorsed thereon the name of such member, together with the name of the post town from which the same is intended to be sent, and the day, month, and year when the same shall be put into the post office; the day of the month to be in words at length, and the whole to be of the hand-writing of the member; and also unless every such letter or packet shall be put into the general or other post office, or into any receiving house appointed by the postmaster-general on the day of the date; and unless the member shall actually be in the post town, or within twenty miles of such post town, or on the day, or on the day before the day on which such letter or packet shall be put into the post office.* *s.* 2.

Whenever the number of letters or packets, not weighing more than one ounce each, sent or received by any member in one day, shall exceed the number before permitted to pass free, and the rates of postage shall differ, then such of the letters or packets as would be chargeable with an higher rate of postage than the remainder, shall be included in the number exempted, in preference to any which would be chargeable with a lower rate of postage; and the remainder shall be chargeable with the rates. *s.* 3.

Officers of state and other public officers.

It shall be lawful for the lord high treasurer or commissioners of the treasury—the secretaries to the treasury—the lord high admiral or commissioners of the admiralty—the secretaries of the admiralty—the principal secretaries of state—their under secretaries—the clerks of the privy council—the secretary at war—the deputy secretary at war—the postmaster general, the secretary to such postmaster-general, the deputy of the postmaster-general for *Scotland*, his secretary, the surveyors of the post office —(the surveyor of his majesty's woods, forests, parks, and chases for the time being, 46 *Geo.* 3. *c.* 142. *s.* 6.)—the paymaster general of the forces, the commander in chief, the secretary to the commander in chief, the adjutant general of the forces, the comptroller of army accounts, the master general of the ordnance, one of the secretaries to the said master general, the secretary to the board of ordnance, the inspector general of fortifications, and the quarter master general of his majesty's forces for the time being (44 *Geo.* 3. *c.* 84.) ALL WITHIN *Great Britain.* The lieutenant general or other chief governor or governors of *Ireland*, and his or their chief secretary, his or their secretary for the provinces of *Ulster* and *Munster* in *Ireland*, his or their secretary residing in *Great Britain*—the under secretary for the law de-

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* A Roman catholic peer is not entitled to frank letters, although he has privilege of peerage, for there is a difference between privilege of peerage and privilege of parliament, and the right to frank letters only extends to those who are actual members of parliament, and have privileges independent of the act, which Roman catholic peers and minors from their incapacity to sit in parliament have not. *Lord Petre* v. *Lord Auckland*, Ea. Ter. 40 Geo. 3. 2 Bos. & Pul. 139.

partment of the chief secretary's office—the under secretary and first clerk for the military department of the chief secretaries office—the lord high treasurer or commissioners of the treasury—the secretary to the treasury—the postmaster general, ALL WITHIN IRELAND, and for the time being, to send and receive letters and packets by the post, free from the duty of postage in the United Kingdom, in the same manner as persons heretofore or now authorized to send or receive letrers free from postage, either in *Great Britain* or *Ireland*, do now send and receive letters free. *s.* 4.

Parliamentary officers.

It shall be lawful for the clerk of the parliaments—the clerk assistant, and the reading clerk of the house of peers, of the United Kingdom—and the clerk of the house of commons, the deputy to the clerk of the house of commons, the two clerks assistant of the house of commons, and the chief clerk without doors of the house of commons of the said United Kingdom (who receives the fees, and pays them to the officers of the said house), to send and receive letters and packets within the said United Kingdom, free from postage, in the same manner as the clerk of the parliaments and the clerk of the house of commons are now authorized to send and receive the same. *s.* 5.

It shall be lawful for the treasurer or paymaster of the navy —and inspector of seamen's wills, to send and receive letters within the United Kingdom, free from postage. *s.* 6.

Officers in Ireland.

It shall be lawful for the lord high chancellor—the lord high treasurer or commissioners of the treasury—the secretary to the treasurer, the quarter-master general, the chief commissioner of the barrack board, the assistant under secretary for the law department of the chief secretary's office, the first clerk of the civil department in the said office, the treasurer or receiver-general of the post office, the comptroller of the sorting office in the post office, and the surveyors of the post office, all within *Ireland*, for the time being, to send and receive letters and packets by the post in *Ireland*, free from the duty of postage. *s.* 7.

Also, it shall be lawful for his majesty's postmaster general of *Ireland* for the time being to authorize, under his hand and seal, any persons, not exceeding two at one time, to send by the post letters and packets which shall concern the business of the post office only, free from the duty of postage, so as the same be indorsed as being upon his majesty's service, and be sealed with the seal of office; and if any such person shall knowingly make such indorsement upon any letter which does not really concern the business of the office, he shall for the first offence forfeit 5*l.* to be recovered and applied in such manner as by an act of 9 *Ann.* for establishing a general post office is directed with respect to penalties inflicted by the said act, and for the second offence shall be dismissed. *s.* 8.

In case any person entitled to send any letters or packets free,

being, by bodily infirmity, disabled from writing the whole superscription, shall choose to authorize some person on his behalf to sign his name and write his superscription, and shall cause notice thereof in writing under his hand and seal, or under the hand and seal of any person authorized by him to notify the same, such authority being certified and attested by the signature of any witnesses sent, and who shall subscribe such notice, to be transmitted to the postmaster general; all such letters so signed and superscribed shall be allowed to pass free. *s.* 9.

Inferior persons may authorize others to frank letters for them.

It shall be lawful for every member of both houses of parliament of the United Kingdom, and the clerks of the two houses, to send by post any *printed votes, proceedings in parliament, or printed newspapers*, free from postage, so as the same be sent without covers, or in covers open at the sides, signed on the outside by the hand of any member of parliament, or either of the said clerks, in such manner as has been heretofore practised; and also it shall be lawful for every member, and for each of the said clerks, to authorize the same to be sent, free from postage, addressed to him at such place within the united kingdom, as he shall have previously given notice in writing, to the postmaster general, either at *London* or *Dublin*. *s.* 10.

Newspapers and votes.

The several persons who, by virtue of any act passed in *Great Britain*, or in *Ireland*, and now in force, are authorized in respect of their offices to send votes, proceedings in parliament, and printed newspapers, free from postage, may send the same within the united kingdom, in like manner as they have been accustomed. *s.* 11.

It shall be lawful for the postmaster general in *England* and *Ireland*, or any of the officers employed under them, to examine any packet sent without a cover, or in a cover open at the sides; and in case any other paper or thing whatsoever shall be found to be inclosed or concealed in such printed paper, or in case there shall be any writing other than the superscription upon such printed paper, or upon the cover, the whole shall be charged with treble postage; and in case any newspaper shall appear not to have been duly stamped, such officer is to stop the same, and send it to the commissioners of the stamp duties. *s.* 12.

But it shall be lawful for any person whatsoever to send any printed votes, proceedings in parliament, and printed newspapers by the post to *Ireland*, at the rate of 1*d.* only for the carriage of each, and also for any person whatsoever to send any printed newspaper by the post from *Ireland* to *England* and *Scotland*, at the rate of 1*d.* only for the carriage of each; such printed votes, proceedings, and printed newspapers, to be open at both ends; the 1*d.* to be paid when the same shall be put into the post office, and marked post paid, and the money carried to the revenue of the post office. *s.* 13.

Newspapers sent by the two-penny post in what case chargeable.

But all printed newspapers sent by *the twopenny post*, to places beyond the delivery of the general post, shall be chargeable with a duty of one penny only; provided such newspapers be sent in the manner prescribed in this act, the 45 *Geo.* 3. c. 11. s. 4.

Also by 46 *Geo.* 3. c. 41. it shall be lawful for the lord high chancellor of *Great Britain*, the speaker of the house of commons, the first lord commissioner of his majesty's treasury in *Great Britain*, the first lord commissioner of the admiralty, the chancellor of his majesty's exchequer in *Great Britain*, the chancellor of his majesty's exchequer in *Ireland*, the president of the committee of council appointed for the consideration of matters relating to trade and foreign plantations, and the assistant secretary to the treasury in *Great Britain*, to send and receive letters and packets free from postage. s. 1.

And it shall be lawful for the commissioners of the treasury for the convenience of public business, by writing under their hands, to authorize that letters and packets directed by the postmaster general, the secretary to the postmaster general, the secretaries to the treasury, and the assistant secretary to the treasury in *Great Britain* may be sent free from postage, without the name of the post town, and the date of the day, month, and year, when sent, being superscribed thereon. s. 2.

Forgign and superscriptions to avoid postage.

If any person whatsoever shall, after 1st of *July*, 1802, forge or counterfeit the hand-writing of any person whatsoever in the superscription of any letter or packet, in order to avoid the payment of postage, or shall forge, counterfeit, or alter, or procure to be forged, &c. the date upon the superscription, or shall write and send by the post, or cause to be written and sent by the post, any letter or packet, the superscription whereof shall be forged, or the date altered, in order to avoid the postage, knowing the same, such person shall be guilty of felony, and transported for seven years. 42 *Geo.* 3. c. 63. s. 14.

Post-office and officers established.

There shall be one general post-office established within the city of *London*; and one master of the post-office shall be appointed by letters patent, by the style of postmaster-general. 9 *Ann*, c. 10. s. 2.

How officers qualified.

And such postmaster-general, and all officers under him, receiving the sacrament, and taking the test, and the oaths of allegiance and supremacy, and abjuration, as appointed by law, shall be qualified to execute their employments. s. 25.

But no person shall be capable of the office of postmaster-general, or any part thereof, or any other employment relating to the post-office, unless he shall first have taken the following oath *before some justice of the peace* for the county where such person resides. s. 41.

*I* A B *do swear, that I will not wittingly, willingly, or knowingly open, detain, or delay, or cause, procure, permit, or suffer, to be opened, detained, or delayed, any letter or letters, packet or packets, which shall come into my hands, power, or custody, by reason of my*

*employment in, or relating to the post-office; except by the consent of the person or persons to whom the same is or shall be directed, or by an express warrant in writing, under the hand of one of the principal secretaries of state, for that purpose; or, except in such cases where the party or parties, to whom such letter or letters, packet or packets, shall be directed, or who is or are hereby chargeable with the payment of the post or posts therewith, shall refuse or neglect to pay the same; and except such letters or packets as shall be returned for want of true directions, or when the party or parties to whom the same is or shall be directed, cannot be found: and that I will not any way embezzle any such letter or letters, packet or packets, aforesaid.*

Postmaster to have the exclusive carriage of letters.

And the said postmaster and his deputies, and their servants and agents, and no other, shall have the receiving, carrying, and delivering, of all letters and packets; except such letters as shall concern goods sent by common carriers of goods by carts, waggons, or pack-horses, and shall be delivered with the goods without hire; and except letters of merchants, and masters of ships or vessels, of merchandize, or any lading therein, sent on board such ships, so as such letters be delivered without hire; and except commissions, the return thereof, affidavits, writs, process, or returns, issuing out of any court, and also letters sent by private friends in their journey, or by messengers sent on purpose. 9 *Ann.* *s.* 10. *s.* 2.

But nothing in the said exception shall give authority to common carriers of goods, to receive or deliver any letters that do not concern goods in their carts, waggons, or on their pack-horses, nor to any drivers of stage-coaches, nor to any owners of passage-boats, nor passengers on board such vessels, although they do not receive hire for the same. *s.* 3.

Delivery of ship letters.

And all letters and packets that by any ship shall be brought to any port within her majesty's dominions (other than letters before excepted), shall be delivered to the deputies only of such postmaster-general, to be sent post to the general post-office. *s.* 15.

And every master, or other person, for every letter or packet he shall deliver unto such deputies, shall receive 1d. (by 39 *Geo.* 3. *c.* 76; 2d.) he signing a certificate of the number of letters delivered, and by what vessel they came, and of the time when he delivered the same, and giving a receipt for such pence; which certificate and receipt shall be, by the next post, returned to the postmaster-general, together with the letters. *s.* 16.

And by 5 *Geo.* 3. *c.* 25, no vessel shall break bulk, or make entry in any port, until all letters and packets brought by such vessel, or any company, or passenger on board, shall be so delivered, except such letters, and things, as are above excepted; and also, all letters and packets brought in any vessel liable to perform quarantine (which are to be delivered to the superintendant of the quarantine, and after due care had therein, dispatched, in the usual manner, by the post); and all masters,

mariners, passengers, and other persons, neglecting or refusing to deliver the letters, shall forfeit 20*l.* to be recovered in any court of record; one moiety to his majesty, and the other to him who shall inform, with full costs of suit. *s.* 3.

And it shall be lawful for the deputies to take for every such letter and packet so delivered from any vessel (other than packet-boats), as shall be *directed to any place within the town belonging to such port*, or within the limits of the delivery of letters and packets by such deputies, the sum of one penny over and above what may now be received for the same. *s.* 4.

Penalty on persons carrying of letters.

And no person other than such postmaster-general and his deputies, shall receive, carry, or deliver, any letter or packet (other than as before excepted), or employ any foot-post, horse-post, boat, or conveyance, for carrying letters or packets; on pain of 5*l.* for every offence, and 100*l.* for every week; to be recovered with costs in any court of record, one moiety to the king, and the other to him who shall sue. But this act shall not be prejudicial to the privileges of the universities of *Oxford* and *Cambridge*. 9 *Anne*, c. 10. *s.* 17. 32.

Exceptions.

And nothing herein shall prohibit the carrying of letters to or from the next post stage, above six miles from the general post office. *s.* 22.

But no person shall make collection of letters in or near *London*, under pretence of conveying the same to any places in the said city, or to the general office, without the license of the postmaster general. *s.* 23.

And it is further enacted by 42 *Geo.* 3. *c.* 81. that no person whatsoever shall send or cause to be sent, or tender or deliver in order to be sent, otherwise than by the post, or with the consent of the postmaster-general, or his deputies, or to the nearest post town to be from thence forwarded by the post, any letter or packet of letters, on pain of forfeiting 5*l.* to be recovered with full costs by any person who will sue for the same in any court of record at *Westminster*, one moiety thereof to the use of the king, and the other moiety to him who shall so inform. *s.* 5.

But this act shall not subject any person to any such penalty, for sending or for causing to be sent, or for tendering or delivering in order to be sent, any letter which shall concern goods sent by any common carrier, and shall be sent with the goods, without reward, nor any letters of merchants, owners of any ships, barks, or vessels of merchandize, or any the cargo or lading therein sent on board such vessels of merchandize, whereof such merchants or masters are owners, to be delivered by the masters, or any other person employed by them for the carriage of such letters according to their directions, without reward for the same, nor any commission or return thereof, affidavits, writs, process, or proceedings, or return thereof, issuing out of any court, nor any letter sent by any private friends in their way of journey, or by any messenger sent on purpose, concerning the private affair of any person. *s.* 6.

All inland letters shall pay the rates at such stages at which they are delivered, unless the party that doth put in the letters desireth to pay elsewhere; and unless such letters are directed on board any ship, or to any person in the army, or are sent by the penny-post, and unless they be letters going out of *Great Britain*, which have usually paid the rates in *England*. *s.* 31. Rates to be paid where letters are delivered.

And all sums not exceeding 5*l.* that shall be due for letters, or which shall be received for the post of letters, without paying the monies to the receiver-general of the said revenues, shall be recovered BEFORE JUSTICES OF PEACE, in the same manner as small tithes are by the laws of *England*; and such debt shall be preferable in payment before any debt to a private person. *s.* 30. How postage of letters recoverable.

And it shall be lawful for the postmaster-general, and his deputy, if such postmaster-general shall deem it necessary, to cause the postage of all letters which are to be sent out of the kingdom, to be paid upon their being put into any post office. 5 *Geo.* 3. *c.* 25. *s.* 16. In what cases foreign letters are to be paid for on putting into the office.

The postmaster-general and his deputies shall observe such orders for the settlement of posts and stages, as her majesty shall make. 9 *Ann.* *c.* 10. *s.* 27. Settlement of posts.

It shall be lawful for such person as the postmaster-general for the time being shall appoint, to measure by the wheel, all the post roads. 5 *Geo.* 3. *c.* 25. *s.* 9. Measuring roads.

And such persons so appointed to measure, shall be sworn to perform the same according to the best of their skill and judgment; *which oath shall be administered by any justice*, who is to make certificates thereof in writing, to be entered, without fee, in the chief post-offices; and moreover, such persons shall cause fair surveys or books to be made out: one whereof shall be left with the postmaster-general in *London*; which said surveys or books shall be signed by the person making the same, *who shall make oath of the truth of such surveys, before any justice*; and a certificate of his having sworn to the truth thereof shall be signed by the postmaster-general; which books shall determine the distances on all the post roads; and in case of any suspicion of error or wrong admeasurement, it shall be lawful for the said postmaster-general to cause new surveys to be made. *s.* 10.

No person or persons shall willingly open, detain, or delay, any letter or packet, after the same is delivered into the post-office, or into the hands of any person employed for receiving or carrying post letters, and before delivery to the persons to whom they are directed, or for their use, except by warrant from one of the principal secretaries of state, for every such opening, detaining, or delaying; or except where the party to whom such letter or packet shall be directed, shall refuse to pay for the same; and except letters returned for want of true directions, and where the party cannot be found; and every person offending in manner Postmasters detaining letters.

aforesaid, or who shall embezzle any such letters or packets, shall forfeit 20*l.* to be recovered in any court of record at *Westminster*, by such persons as will sue for the same, with costs; and over and above such penalty, every person so offending shall be incapable of having any office, trust, or employment, in the post-office *. 9 *Ann.* c. 10. s. 40.

Opening of foreign letters to discover contraband goods.

But by 24 *Geo.* 3. *sess.* 2. *c.* 37, whenever any foreign letter or packet, containing any inclosure, shall be received at any of the general post-offices, it shall be lawful for any of the officers employed in the said office to carry the same to any justice, and to make oath, that he suspects the same to contain goods prohibited to be imported, or on the importation of which a duty is payable; and it shall then be lawful for him, in the presence of the magistrate to cut with a penknife in and through the folds of the said letter or packet, and its enclosure, one opening not exceeding two inches in length; and if it shall then appear to the said magistrate that such goods are contained therein, he shall proceed forthwith to open the said letter, and shall immediately, in presence of the officer, destroy such goods; and in such case, the magistrate shall inclose such letter in a cover, in which shall be written an attestation signed by him, containing the name of the officer by whom the same shall have been brought to him, the time of its being brought, and the quantity and description of the goods found therein, and attesting that the same were then by him destroyed; and shall deliver the said letter so inclosed, and also sealed by him, to the said officer, to be by him forwarded to the commissioners of customs, who shall, on receipt thereof, cause to be paid to the said officer not exceeding five pounds, nor less than ten shillings. *s.* 4.

And if, on making such opening, no such goods shall be found therein, the magistrate shall then inclose the same in a cover, with an attestation signed by him, that the opening was made in his presence, and shall deliver the same, sealed up, to the said officer, to be transmitted by the ordinary course of the post to the person to whom it shall have been directed: but no additional postage shall be charged thereon, nor shall the same be detained thereby beyond the regular course of the post, except in cases of the most urgent necessity. *s.* 5.

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* It has been determined that the above penalty can only attach on those *persons who are employed by the post-office*; for the words at the end of the clause which enact, that *over and above such penalty, every person so offending shall be incapable of having any office in the post-office;* shew that the legislature intended to restrain the operation of the general words *no person or persons* to those employed by the post-office.—A person therefore, employed by a postmaster with the assent of the inhabitants of a town which was not a post-town, to deliver letters there, has been held not to be a person on whom the penalty can attach. 5 *Term Rep.* 101.

If any deputy, clerk, agent, letter-carrier, postboy, or rider, or other officer or person whatsoever, employed in receiving, stamping, sorting, charging, carrying, conveying, or delivering, letters or packets, or in any other business relating to the post-office, shall secrete, embezzle, or destroy any letter or packet, bag or mail of letters, which he shall be intrusted with, or which shall have come to his possession, containing any bank note, bank post-bill, bill of exchange, exchequer bill, *South Sea* or *East India* bond, dividend warrant of the bank, *South Sea, East India*, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seaman's ticket, state lottery ticket or certificate, bank receipt for payment on any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, *American* provincial bill of credit, goldsmith's or banker's letters of credit or note for the payment of money, or other bond or warrant, draught, bill, or promissory note whatsoever, for the payment of money, or any part or parts of any such security or instrument, 42 *Geo.* 3. *c.* 81. *s.* 1, or shall steal and take out of any letter or packet that shall come to his possession, any such bank note, *&c.* (or any part or parts of any such security or instrument, 42 *Geo.* 3. *c.* 81. *s.* 1,) every such offender shall be deemed guilty of felony, without benefit of clergy. 7 *Geo.* 3. *c.* 50. *s.* 1. Stealing letters containing securities for money.

*This clause extends only to letters containing securities relating to the payment of money, and not to those in which money itself is inclosed; for in* Skutt's *case at the* Old Bailey, July 1774, *the court were clearly of opinion, that the stealing of a letter containing a five and threepence in gold coin was not within the act: and the defendant having been indicted upon the above clause, was accordingly acquitted:—he was however detained, indicted, tried, and convicted of the* SIMPLE GRAND LARCENY *at common law in stealing the five and threepence, and was transported.* Leach's Cr. L. 110. Stealing letters containing money itself.

And if any person whatsoever, whether employed in any business relating to the post office or not, shall counsel, command, hire, persuade, procure, aid, or abet, any such officer or person aforesaid, to commit any felony or offence in the said act, or in this act before mentioned, or shall with a fraudulent intention buy or receive the whole or any part of any such security or instrument as aforesaid, which at the time of buying or receiving thereof, he shall know to have been contained in any such letter or letters, packet or packets, so secreted or embezzled, or stolen or taken out, or which he, at the time of buying or receiving thereof, shall know to have been contained in, and stolen or unlawfully taken out of any letter or letters, packet or packets, stolen or taken by any person whatsoever, from any mail or mails, bag or bags of letters sent by the post, or from or out of

any post office, or house or place for the receipt or delivery of letters, every person so offending in any of the ways last mentioned shall be guilty of felony without benefit of clergy, and may be tried and attainted, as well before as after the trial or conviction of the principal, and whether the principal shall have been apprehended, or shall be amenable to justice or not. 42 *Geo.* 3. c. 81. *s.* 2.

Robbing the mail.

If any person shall rob any mail, in which letters are sent by the post, of any letter or packet, bag or mail of letters; or shall steal and take from any such mail, or from or out of any bag, or from or out of any post-office, or place for the receipt or delivery of letters, any letter or packet; such offender shall be deemed guilty of felony, without benefit of clergy. 7 *Geo.* 3. *c.* 50. *s.* 2.

And the offender may be tried either in the county wherein such felony shall be committed, or wherein such offender shall be apprehended. 42 *Geo.* 3. *c.* 81. *s.* 3.

Embezzling money received for postage; destroying letters or advancing postage and not accounting.

If any deputy, clerk, agent, letter carrier, or other servant, 'appointed and entrusted, to take in letters or packets, and 'receive the postage thereof, shall embezzle, or apply to his own 'use, any money by him received with such letters for the post- 'age thereof: or shall burn or otherwise destroy any letters or 'packets by him received; or who, by virtue of their offices, 'shall advance the rates, and not account for the money received 'for such advanced postage;' every such offender shall be deemed guilty of felony. 5 *Geo.* 3. *c.* 25. *s.* 19.

And it is further enacted by 7 *Geo.* 3. *c.* 50, if any deputy, clerk, agent, letter-carrier, officer, 'or other person whatsoever, 'employed in any business relating to the post-office, shall re- 'ceive into his possession any letter or packet, to be forwarded 'by the post, and receive any money therewith for the postage 'thereof, shall burn or otherwise destroy' any letter or packet by him so received; or if any such deputy, or other person so employed, shall advance the rate of postage upon any letter or packet sent by the post, and shall secrete, and not duly account for the money by him received for such advanced postage; every such offender shall be guilty of felony. 7 *Geo.* 3. *c.* 50. *s.* 3.

Post boy guilty of neglect.

If any post-boy or rider, having taken any of his majesty's mails, or bags of letters or packets, under his care, in order to convey the same to the next post town or stage, shall quit the same before his arrival at such stage;—or shall suffer any other person (the persons employed to guard such mail only excepted) to ride on the horse or carriage along with the said mails or bags; or shall loiter on the road, and wilfully mispend his time, so as to retard the arrival of the said mails or bags;—or shall not, in all possible cases, convey such mails after the rate of six *English*

miles an hour at the least;—every such offender convicted, either by voluntary confession, or the oath of one witness, before one justice, shall be sent to the house of correction, and confined to hard labour for not exceeding one month, nor less than fourteen days. *5 Geo. 3. c. 25. s. 20.*

And if any post-boy or rider shall, by himself, or in combination with others, unlawfully collect, or receive letters or packets, or convey or cause letters and packets to be unlawfully conveyed, and shall thereof be convicted, either upon voluntary confession or by the oath of one witness before one justice, every such offender shall, for every letter collected, conveyed, or delivered, forfeit 10*s.* to be paid to the informer; and if not paid upon conviction, it shall be lawful for such justice to commit such offender to the house of correction, to hard labour for not exceeding two months, nor less than one. *s. 21.*

Penalty on refusing to deliver up the mail-bag if picked up or left by mistake.

If any person shall wilfully secrete, keep, or detain, or being required to deliver up by any deputy, clerk, agent, letter-carrier, post-boy, rider, driver, or guard of any mail coach, or any other officer or person whatsoever employed in any business relating to the post office, shall refuse or wilfully neglect to deliver up any mail or bag of letters sent by the post, or any letter or packet sent by the post, or put for that purpose into any post office, or place for the receipt or delivery of letters sent by the post, and which shall have been found or picked up by the same or any other person, or shall by accident or mistake have been left with, or at the house of the same or any other person, every person so offending shall be guilty of a misdemeanour, to be punished by fine and imprisonment. *42 Geo. 3. c. 81. s 4.*

Horses not to be taken without consent of owners.

No person shall have power to take any horses for the services mentioned in the act, without the consent of the owners. *9 Ann. c. 10. s. 28.*

Mail carriages to pass toll-free.

By *25 Geo. 3. c. 57*, all carriages whatsoever, or horses, employed in conveying from one part of this kingdom to another the mail or packet, shall be exempted from the payment of any tolls for the passage through any turnpike toll-gate, or bar.

Letters to be delivered in post towns at the common postage, and without any additional charge.

It has been solemnly determined, that the postmaster cannot demand or receive any thing for the delivery of letters within the post town, beyond the legal rate of postage; and that he is entitled to nothing more for the delivery of a letter there, than the usual rate of postage; for if parliament meant that any thing further should be paid in the post towns, they would have fixed it themselves, instead of leaving it in the breast of the postmaster, who would thereby have power to increase the rate at pleasure, and so raise a tax upon the subject at his discretion. See *Barnes* v. *Foley*, 4 *Burrow's Rep.* 2151, 2152. 5 *Burrow's Rep.* 2711. *Stock* v. *Harris*, 5 *Burrow's*

*Rep.* 2709. *Rowning* v. *Goodchild*, 5 *Burrow's Rep.* 2716. *Smith* v. *Powditch*, *Cowper's Rep.* 187. 189.

It has also been determined, and is now clearly settled, that the postmaster is obliged to deliver out all letters sent by the general post, at the respective habitations of the persons residing in the post town, and that the inhabitants need not send to the office for their letters; for though the postmasters are not bound to find out persons not sufficiently described, yet if they know them, and they reside *within the established limits*, the postmasters are obliged to deliver their letters at their places of abode; for how, said lord *Mansfield*, should people know of their letters? are they to come or send to the post-office every post-day to inquire after the chance of a letter? This would be exceedingly inconvenient to every body; and would be particularly hard upon such of the inhabitants as seldom receive any letters by the post at all. See *Stock* v. *Harris*, 4 *Burrow's Rep.* 2713, 2714. *Rowning* v. *Goodchild*, 4 *Burrow's Rep.* 2715, 2716. *Black. Rep.* 906. *Smith* v. *Powditch*, *Cowper's Rep.* 187. 189.

Charges for horses riding post.

The postmasters may charge 3*d.* a mile for each horse riding post, and 4*d.* a mile for the person riding as guide; and shall not charge for any bundle or parcel of goods, not exceeding 80*lb.* weight, to be laid on the horse rid by the guide; and shall not be obliged to carry above that weight. 9 *Ann.* c. 10. *s.* 14.

Weight of letters sent by the two-penny post.

No letter, packet, or parcel, shall be conveyed by the two-penny post, if the weight shall exceed four ounces, other than such letters as have first come to the general post office, or shall be passing by the two-penny post into the general. 5 *Geo.* 3. c. 25. *s.* 14.

*Potatoes.* Stealing of. SEE TRESPASS.

*Pound and pound-breach.* SEE DISTRESS.

*Powdike.* SEE FELONY (within clergy, § *Fens.*)

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# PRÆMUNIRE.

THE offence of *præmunire* is so called from the words of the writ *præmunire** *facias A B*, cause *A B* to be *forewarned* that he

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* A barbarous word for *præmoneri.*

appear before us to answer the contempt wherewith he stands charged; which contempt is particularly recited in the preamble to the writ. 4 *Black. Com.* 103.

It took its rise from the exorbitant power claimed and exercised in *England* by the pope. 4 *Black. Com.* 103. 2 *Inst.* 580. 1 *Hawk.* c. 19.

And the original meaning of the offence is this, *viz.* introducing a foreign power into this land, and creating a government within a government, by paying obedience to papal process. 4 *Black. Com.* 115.

It is therefore to be considered;

## I. *What offences come under the notion of a præmunire.*

## II. *How such offences are to be punished.*

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### I. *What offences come under the notion of a præmunire.*

The offences of this nature, within the original intent of the statutes, seem to fall under the following particulars: 1. Making use of papal bulls. 2. Derogating from the king's common law courts. 3. Appealing to *Rome* from any of the king's courts. 4. Exercising the jurisdiction of a suffragan without the appointment of a bishop of a diocese. 5. Refusing to elect or consecrate the person nominated by the king to a bishoprick. 6. Maintaining the pope's power. 7. Bringing in any agnus dei, crosses, or the like. 8. Contributing to the maintenance of a popish seminary. 9. Refusing the oaths. 1 *Hawk.* c. 19. s. 12.

1. *The offence of making use of papal bulls.*] This is made a præmunire by many ancient statutes. 1 *Hawk.* c. 19. s. 12.

For by the statutes of *provisors.** The court of *Rome* shall not present or collate to any bishoprick or living in *England*; and whoever disturbs any patron in the presentation to a living, by virtue of a papal provision, such *provisor* shall pay fine and ransom to the king at his will, and be imprisoned till he renounce such provision. 4 *Black. Com.* 111.

And by 3 *Ric.* 2. c. 3. none shall take any benefice of an alien, or convey money to him for the farm thereof, on pain of incurring the pain of the statutes of provisors.

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* *St.* 25 *Ed.* 3. *st.* 6. 27 *Ed.* 3. *st.* 1. *c.* 1. 38 *Ed.* 3. *st.* 1. *c.* 4. & *st.* 2. *c.* 1, 2, 3, 4.

Also by 7 *Ric.* 2. *c.* 12, no alien shall purchase or occupy a benefice in *England* on like pain.

And by 38 *Ed.* 3. *st.* 2. *c.* 1. 12 *Ric.* 2. *c.* 15, and 13 *Ric.* 2. *st.* 2. *c.* 2, whoever shall accept a benefice contrary to 25 *Ed.* 3, shall be banished.

And by 13 *Ric.* 2. *st.* 2. *c.* 3, whoever shall bring a sentence of excommunication against any person for executing the said stat. 25 *Ed.* 3. *st.* 6. shall suffer pain of life and member.

And it is enacted by 16 *Ric.* 2. *c.* 5, which is called the statute of PRÆMUNIRE, that 'if any person shall purchase or 'pursue, or cause to be purchased or pursued in the court of '*Rome* or elsewhere, any translations, processes, sentences of 'excommunication, bulls, instruments, or other things contrary 'to the tenor of the statute of provisors, which touch the king, 'against him, his crown, his regality, or his realm, or bring them 'within this realm, or receive them, or make thereof notifica'tion, or any other execution thereof within the realm, or 'without; their notaries, procurators, maintainers, abettors, fau'tors, and counsellors, shall be put out of the king's protection, 'and their lands and goods forfeit to the king, and they shall be 'attached by their bodies, and brought before the king and his 'council to answer to the cases aforesaid, or process shall be 'made against them by præmunire facias*. *s.* 2.

And by 2 *Hen.* 4. *c.* 3, whoever shall purchase from *Rome* a provision of exemption from ordinary obedience, and by 2 *Hen.* 4. *c.* 4. whoever shall put in execution bulls purchased by those of the order of *Cisteaux*, to be discharged of tithes, shall incur the like penalty.

They are also further restrained by 6 *Hen.* 4. *c.* 1. 7 *Hen.* 4. *c.* 8. 9 *Hen.* 4. *c.* 8, and 3 *Hen.* 5. *st.* 2. *c.* 4, by which the statutes above mentioned are enforced and explained.

And it is further enacted by 23 *Hen.* 8. *c.* 2. *s.* 22, that whoever shall sue for or execute any licence, dispensation, or faculty from the see of *Rome*; and by 28 *Hen.* 8. *c.* 16, whosoever shall use, allege, or plead the same in any court, shall incur the like penalty †.

But by 13 *Eliz.* *c.* 2, if any person shall get or publish any bull or instrument from *Rome*, he shall be guilty of high treason, and his aiders and comforters shall incur a præmunire; and every person to whom the same shall be offered, not disclosing the same in six weeks to some of the privy council, shall incur the penalty of misprision of high treason. *s.* 3, 4, 5.

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* That is, according to 27 *Ed.* 3. *c.* 1, for which see next page.

† Yet it hath been holden, that the alleging an ancient bull in order to induce another principle matter, whereon to ground a title, without claiming any thing from the bull itself, is not within this statute. 2 *Levinz*, 251.

And the justices of the peace, as well as other justices, may enquire thereof, within a year and a day. 23 *Eliz. c.* 1. *s.* 8.

*Hawkins* says, that notwithstanding this stat. 13 *Eliz. c.* 2, the ancient statutes still continue in force; and that it is in the election of the crown to proceed either upon them or 13 *Eliz.* 1 *Hawk. c.* 19. *s.* 13.

Derogating from the king's courts.

2. *The offence of derogating from the king's common law courts*] This is said to have been an high offence at common law, and is made a præmunire by many ancient statutes. 1 *Hawk. c.* 19. *s.* 14.

For by 27 *Ed.* 3. *c.* 1. (called the statute of *provisors*) 'if any 'subject draw any out of the realm in plea, whereof the cog'nizance pertains to the king's courts, or of things whereof 'judgment be given in the king's courts, or sue in any other 'court to defeat or impeach the judgments given in the king's 'courts, *he shall be warned* to appear in proper person, at a day 'containing the space of two months, at which if he appear 'not, he shall be put out of the king's protection, his lands and 'chattels forfeited, and his body imprisoned and ransomed at 'the king's will.'

And by the said stat. 16 *Ric.* 2. *s.* 5. both those who shall pursue, or cause to be pursued in the court of *Rome or elsewhere*, any processes or instruments, or other things whatsoever which touch the king, against him, his crown, and regality, or his realm, and also those who shall bring, receive, notify, or execute them, and their abettors, fautors, and counsellors, shall be put out of the king's protection, and their lands and goods forfeit to the king, and they shall be attached by their bodies, and brought before the king and his council to answer the cases aforesaid, or process shall be made against them by præmunire facias. *s.* 2.

*Or elsewhere.*] In the construction of these statutes it was holden, that by force of these words *or elsewhere*, suits in the admiralty or ecclesiastical courts are within the above stat. of *Ric.* 2 if they concern matters, the cognizance whereof belongs to the common law; as where a bishop deprives an incumbent of a donative, or excommunicates a man for hunting in his parks, or the like. 1 *Hawk. c.* 19. *s.* 18.

So also where commissioners of sewers imprisoned a man for not releasing a judgment at law, it was held that they were guilty of a præmunire. 1 *Hawk. c.* 19. *s.* 16. 18.

But it seemeth, that a suit in the above courts for a matter which appears not by the libel itself, but only by the defendant's plea or matter subsequent, to be of temporal cognizance, as where a plaintiff libels for tithes, and the defendants plead that they were severed from nine parts, by which they became a lay fee, is not within the statute, because it appears not that either the plaintiff or the judge knew they were severed. 1 *Hawk. c.* 19. *s.* 19.

Appealing to *Rome* from the king's courts.

3. *The offence of appealing to* Rome *from any of the king's courts.*] This offence is made a præmunire by 24 *Hen.* 8. c. 12, & 25 *Hen.* 8. c. 19, by which it is enacted, that "all such appeals as "formerly were made to *Rome*, shall from henceforth be "made to the high court of chancery." 1 *Hawk.* c. 19, c. 20.

Exercising the jurisdiction of a suffragan.

4. *The offence of exercising the juridiction of a suffragan, without the appointment of the bishop of the diocese.*] This offence is made a præmunire by 26 *Hen.* 8. *c.* 14. which sets forth at large, for what towns such suffragans may be nominated by the king, and also how they may be nominated, consecrated, and commissioned. 1 *Hawk.* c. 19. *s.* 21.

Refusing to elect or consecrate a bishop.

5. *The offence of refusing to elect or consecrate the person nominated by the king to a bishoprick.*] This offence is made a præmunire by 25 *Hen.* 8. c. 20, by which it is enacted, that if any dean and chapter refuse to elect the person named in the king's letter * for a bishoprick, and to signify such election to the king within 20 days after the licence shall come to their hands, or if any archbishop or bishop, after such election (or nomination by the king, in default thereof, signified to them by the king) shall refuse within 20 days to confirm and consecrate the person so signified to them, they incur a præmunire.

Maintaining the pope's power.

6. *The offence of maintaining the pope's power.*] By 5 *Eliz. c.* 1. if any person shall maintain the authority of the see of *Rome* in this realm, he shall incur a præmunire for the first offence, and for the second, shall be guilty of high treason; prosecution to be within a year; and the justices in sessions may enquire thereof, and shall certify the same into the *King's Bench*. *s.* 2, 3, 4. 10, 11.

And by another statute, *viz.* 3 *Jac.* 1. *c.* 4. if any person shall put in practice to absolve or withdraw any subjects from their allegiance, or if any person shall be willingly absolved or withdrawn, he, his aiders and maintainers, shall be guilty of high treason; the trial to be at the assizes, or in the *King's Bench*. *s.* 22, 23, 25.

Bringing in any *agnus dei.*

7. *The offence of bringing in any agnus dei, crosses, or the like.*] By 13 *Eliz.* c. 2, if any person shall bring into this realm, any token or thing called an *agnus dei*, or any crosses, pictures, beads, or such like vain and superstitious things, from the bishop of *Rome*, or any claiming authority from him to consecrate the same, and shall deliver or offer the same to any subject of this realm to be worn or used, as well the person so doing, as all other persons which shall receive the same, shall incur the penalties of præmunire. *s.* 7.

But if any person to whom such *agnus dei* or other things shall be offered, shall apprehend the party offering the same, and

* Conge d'elire.

bring him to the next justice of peace, if he shall be of power so to do, or for lack of such ability, shall within three days after such offer made, disclose the name of such person as shall make the offer, and the dwelling place, or places of resort of the same person (which he shall endeavour to know by all the means he can), to the ordinary of that diocese, or to any justice of peace where such person to whom such offer shall be made shall be resiant; and also if such person shall receive any such *agnus dei*, or other thing, and shall within one day after such receipt deliver the same to any justice of peace, such person shall not incur any penalty. *s.* 8.

And if any justice of peace to whom any matter before mentioned shall be shewed, do not within 14 days declare the same to some of the privy council, the justice shall incur the like pain*. *s.* 10.

Contributing to the maintenance of a popish seminary.

8. *The offence of contributing to the maintenance of a popish seminary.*] By 27 *Eliz. c.* 2. if any person under her majesty's obedience shall wittingly and willingly convey out of her majesty's dominions, or wittingly or willingly give or contribute any money or other relief for any Jesuit, seminary, priest, or such other ecclesiastical person as aforesaid, or for the maintenance or relief of any college of Jesuits or seminary beyond the seas, or of any person in the same, every person so offending shall incur the penalty of præmunire. *s.* 6.

And if any of her majesty's subjects (not being a Jesuit or ecclesiastical person), which shall be of any college of Jesuits or seminary beyond the seas, shall not within six months after pro-

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* In this place it will be proper also to notice the penalties inflicted on persons having popish books in their custody, or bringing into the realm, or printing or selling the same.

And to this purpose it is enacted, *First*; by 3 & 4 *Ed.* 6. *s.* 10, that if any person shall *have in his custody* any books called antiphoners, missals, grailes, processionals, manuals, legends, pies, portuasses, primers, in *Latin* and *English* (Except those set out by *Hen.* 8.), couchers, journals, ordinals, or other books for the service of the church, not set forth by the king; he shall forfeit for the first offence 20*s.*; for the second 4*l.*; and for the third, shall be imprisoned at the king's will; and the justices of the peace in their general sessions may hear and determine the same.

*Secondly*; by 3 *Jac.* 1. *c.* 5. no person shall bring from beyond the seas, nor shall print, sell, or buy any popish primers, ladies psalters, manuals, rosaries, popish catechisms, missals, breviaries, portals, legends, and lives of saints, containing superstitious matter, printed or written in any language whatsoever; nor any other superstitious book printed or written in *English*, on pain of 40*s.* one third to the king, one third to him who shall sue in any court of record, and one third to the poor of the parish where such books shall be found; and the books to be burned. *s.* 25.

clamation made in *London*, under the great seal, return into this realm, and within two days after such return, before the bishop of the diocese, or two justices of peace of the county where he shall arrive, submit himself to her majesty, and take the oath of supremacy, every such person which shall otherwise return shall suffer as in case of high treason *. *s.* 5.

Refusing the oath of supremacy.

9. *The offence of refusing the oaths.*] It is enacted by 1 *Will.* & *Mar.* c. 8, that '*all persons who were required to* 'take, or authorised to tender the oaths of supremacy and obe- 'dience under former acts, and which oaths were abrogated by 'the said act of *Will.* and *Mar.* shall in like manner be required 'and authorised to take and tender the new oath of allegiance 'and supremacy under the like penalties, forfeitures, disabili- 'ties, and incapacities as in former statutes.' *s.* 3, 4, 5.

And the statutes here referred to, are in effect as hereinafter mentioned, *viz.* By 1 *Eliz.* c. 1. all ecclesiastical persons, and all ecclesiastical and temporal officers, and all persons having the king's fees or wages; and all persons taking orders, or any degree in any university within the realm, shall take *the oath of supremacy and obedience*, under the pain of losing their benefices and offices. *s.* 19. 26.

And by 5 *Eliz.* c. 1, all the persons abovementioned, and all schoolmasters, public and private, barristers, benchers, readers, ancients in any house of court or chancery, attorneys, sheriffs and officers belonging to the common or any other law, or to the crown, or to any court whatsoever, shall take the said oath in open court, before they shall be admitted to any such vocation or office : and if they belong not to any court, then they shall take the same before such person as shall admit them, or before commissioners appointed under the great seal. *s.* 5.

And any bishop may tender the said oath to any spiritual person within his diocese, as well in places exempt, as others. *s.* 6.

And commissioners may be appointed by the lord chancellor to tender the same to such persons, as by their commission they shall be authorized to tender it unto. *s.* 7.

'And if any person, compellable by either of the said acts, or 'appointed by such commissioners to take the said oath, shall re- 'fuse to take it on a tender thereof, he shall incur a præmunire.' *s.* 8.

And such refusal shall be certified within 40 days before the king in his court of *King's bench*, by those who have authority to tender the said oath, under the penalty of 100*l.* and the sheriff

* But in respect of this clause it is to be observed, that it is enacted by 31 *Geo.* 3. *c.* 32. that no person, professing the roman catholic religion, who shall make and subscribe the oath and declaration in that act appointed, see p. 509 supra, shall be prosecuted for being a papist, or reputed papist. *s.* 4.

of the county wherein the said court shall sit, may impannel a jury, who shall inquire of such refusal, in such manner as if it had happened in the same county. *s.* 9.

But on this last clause it hath been holden that the *trial* must be by a jury of the county wherein the oaths were refused, for the statute only authorizes *an indictment* by a jury of the county wherein the court sits. 1 *Hawk. c.* 19. *s.* 35.

And by 7 *Jac.* 1. *s.* 6, all persons whatsoever, as well ecclesiastical as temporal, of what estate, dignity, pre-eminence, sex, quality, or degree soever he or she shall be, above the age of 18 years, being in that act mentioned and intended*, shall take the said oath. *s.* 2.

And any privy counsellor, or bishop within his diocese, may require any baron or baroness of the age of 18 years, and any *two justices of the peace* (1 Qu.) may require *any other person* of that age to take it.

And if any person of or *above the said age and degree* shall be presented, indicted, or convicted, for not coming to church or not receiving the sacrament, then three of the privy council, whereof the lord chancellor, lord treasurer, lord privy seal, or principal secretary to be one, shall require such person to take the said oath.

And if any person whatsoever of the said age *and under the said degree*, shall be in like manner presented, indicted, or convicted, or if the minister, petty constable and church-wardens, or any other two of them, complain to any justice of peace, and the justice shall find cause of suspicion, then any one justice, or he to whom such complaint is made, shall require such person to take the said oath.

'And all such persons refusing a tender of the said oath, shall 'be bound over to the assizes or sessions; where the said oath 'shall be again tendered to them, and if they again refuse the 'said oath, they shall incur the penalty of præmunire.' *s.* 26.

And all such refusers are disabled to execute any public place of judicature, or bear any other office (being no office of inheritance or ministerial function), or to practise the common or civil law, physic, or surgery, or the art of an apothecary. *s.* 27.

Also by 7 *Will.* 3. *s.* 24, 'serjeants at law, counsellors, at-'tornies, solicitors, proctors, clerks or notaries, practising as 'such, in any court whatsoever, without taking the said oath, 'and subscribing the declaration against popery, shall incur a 'præmunire †.'

Other offences subjected to the pains of præmunire.

Thus far, saith *Blackstone*, the penalties of præmunire seem

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* For this, see title OFFICES, in p. 489 supra.

† For other penalties for not taking the oaths, and more on this subject, see titles OATHS, OFFICES, and PAPISTS.

to have kept within the proper bounds of their original institution, the depressing the power of the pope: but they being pains of no inconsiderable consequence, it has been thought fit to apply the same to other heinous offences: some of which bear more, and some less relation to this original offence, and some no relation at all. 4 *Black. Com.* 116.

Thus, 1. By stat. 1 & 2 *Phil.* & *Mar.* c. 8, to molest the possessors of abbey lands granted by parliment to *Hen.* 8. and *Ed.* 6. is a præmunire.

2. So likewise by 13 *Eliz.* c. 10, is the offence of acting as a broker or agent in any usurious contract, where above 10*l. per cent.* is taken.

3. So to obtain any stay of proceedings, other than by arrest of judgment or writ of error, in any suit for a monopoly, is likewise a *præmunire*, by stat. 21 *Jac.* 1. c. 3.

4. To obtain an exclusive patent for the sole making or importation of gunpowder or arms, or to hinder others from importing them, is also a præmunire by two statutes, the one 16 *Car.* 1. c. 21, the other 1 *Jac.* 2. c. 8.

5. Also on the abolition by stat. 12 *Car.* 2. c. 24, of purveyance and the prerogative of præ-emption, or taking any victuals, beasts, or goods for the king's use, at a stated price, without consent of the proprietor, the exertion of any such power for the future was declared to incur the penalties of præmunire.

6. Likewise to agree to evade the penalties on the importation of cattle, and putting the same in execution, is a præmunire by stat. 20 *Car.* 2. c. 7. s. 10.

7. To assert maliciously and advisedly, by speaking or writing, that both or either house of parliament have a legislative authority without the king, is declared a præmunire by stat. 13 *Car.* 2. c. 1.

8. By the habeas corpus act, also 31 *Car.* 2. c. 2, it is a præmunire, and incapable of the king's pardon, besides other heavy penalties, to send any subject of this realm a prisoner into parts beyond the seas.

9. By 6 *Ann.* c. 7, if any person shall maliciously and directly, by *preaching, teaching, or advised speaking* *, declare, maintain and affirm, that any person or persons hath or have any right or title to the crown of these realms, otherwise than according to 1 *Will.* & *Mar.* c. 2, and 12 *Will.* 3. c. 2, and the acts then lately made in *England* and *Scotland* for the union of the two kingdoms; or that the kings or queens of this realm, with the authority of

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* For writing, printing, or publishing the doctrines herein mentioned is treason. See title TREASON.

parliament, are not able to make laws to limit the crown and descent thereof, shall incur a præmunire.

10. So by stat. 6 *Ann.* c. 23, if the assembly of peers of *Scotland*, convened to elect their sixteen representatives in the *British* parliament, shall presume to treat of any other matter, save only the election, they incur the penalties of præmunire.

11. Also by stat. 6 *Geo.* 1. *s.* 18*, all unwarrantable undertakings, by unlawful subscriptions, then commonly known by the name of bubbles, are made subject to the penalties of præmunire.

12. Lastly; the 12 *Geo.* 3. *s.* 11, subjects to the penalties of the statute of præmunire, all such persons who shall knowingly and willingly solemnize or assist, or be present at the celebration of any marriage with any of the descendants of the body of king *George* the second, prohibited by that act to marry without the consent of the crown†, or at his or her making any matrimonial contract.

## *II. How such offences are to be punished.*

Most of the statutes of præmunire refer to the punishment mentioned in the stat. 16 *Ric.* 2. *s.* 5. before mentioned ‡; and agreeable thereto, the judgment in præmunire, at the suit of the king, against the defendant being in prison, is, that 'he shall be out of the king's protection, and 'that his lands and tenements, goods and chattles, shall be forfeited to the king, and that his body shall remain in prison at 'the king's pleasure:' but if the defendant be condemned upon his default in not appearing, whether at the suit of the king or the party, the same judgment shall be given as to their being out of the king's protection and the forfeiture; but instead of the clause, that the body shall remain in prison, there shall be an award of a capiatur. 1 *Hawk.* c. 10. *s.* 45. *Co. Litt.* 120. 2 *Hawk.* c. 48. *s.* 9.

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* See title Nuisances, in p. 470 supra.

† By the above act, no descendant of the body of king *George II.* other than the issue of princesses married into foreign families, is capable of contracting marriage, without the previous consent of the king signified under the great seal, and any marriage contracted without such consent, is void: nevertheless such of the said descendants, as are above the age of 25, may after 12 months notice given to the king's privy council, contract and solemnize marriage without the consent of the crown; unless both houses of parliament shall, before the expiration of the said year, expressly declare their disapprobation of such intended marriage.

‡ See p. 884 supra.

And it hath been resolved, that a statute, by appointing that an offender shall incur the penalty and danger in stat. 16 *Ric.* 2. *s.* 5, does not confine the prosecution for the offence to the particular process thereby given. 1 *Hawk. c.* 19. *s.* 49.

But it hath been adjudged, that a pardon of all *misprisions*, trespasses, offences, and contempts, will pardon a *præmunire*. 2 *Hawk. c.* 37. *s.* 26.

As to the forfeiture, *Hawkins* says, that it seems unsettled, whether it shall relate to the time of the offence, or only to that of the judgment. 2 *Hawk. c.* 49. *s.* 31.

And whether there can be any accessaries in præmunire, or not, is also undetermined. 2 *Hawk. c.* 29. *s.* 6.

But it is agreed that the statutes of præmunire, which give a general forfeiture of all the lands and tenements of the offender, do not extend to land entailed, after the death of the offender. 1 *Hawk. c.* 19. *s.* 48. 2 *Hawk. c.* 49. *s.* 28.

It also seems that there may be process of outlawry in præmunire *. 2 *Haw. c.* 27. *s.* 114. 22 *Viner's Abr.* 330.

And inasmuch as the stat. 16 *Ric.* 2. expressly saith, that such offenders shall be put out of the king's protection; it is certain that no person whatsoever attainted of *any præmunire*, can bring any action for *any private injury*, how atrocious soever, being so far out of the protection of the law, that it will not guard his civil rights, nor remedy any grievance which he as an individual may suffer. 1 *Hawk. c.* 19. *s.* 47. 4 *Black. Com.* 118.

And no one, knowing him to be guilty, can with safety give him aid, comfort or relief. 1 *Hawk. c.* 19. *s.* 47.

And as persons attainted of præmunire can bring no action, it hath been formerly questioned, whether they have a right to demand surety of the peace or not. 1 *Hawk. c.* 60. *s.* 3.

But *Dalton* saith that at this day, a man attainted in a præmunire may require, and ought to have this surety granted to him; and for this he cites *Pulton de pace regis*, 19. and *Cromp.* 133. *Dalton, c.* 117. *s.* 6.

Yet so odious was this offence formerly esteemed, that a man attainted thereof might have been slain by any other man without danger of law: because it was provided by the stat. 25 *Ed.* 3. *st.* 5. *c.* 22, that any man might do to him as to the king's enemy; and any man might lawfully kill an enemy. *Co. Lit.* 130. 4 *Black. Com.* 118.

But *Blackstone* saith, that the position itself, that it is at any time lawful to kill an enemy, is by no means tenable; it is only lawful, by the law of nature and nations, to kill him in the heat of battle, or for necessary defence: and to obviate such savage and mistaken notions, the stat. 5 *Eliz. c.* 1. provides, that it shall not be lawful to kill any person attainted in a præ-

* See title Outlawry, in p. 497 supra.

munire, any law, statute, opinion, or exposition of law to the contrary notwithstanding. 4 *Black. Com.* 118.

As to the authority of justices of the peace in relation to this offence, it seems agreed, that although the præmunire is not within the letter of the commission of the peace, yet inasmuch as it is against the peace of the king and of the realm, any justice of the peace may, either on his own knowledge, or the complaint of others, cause any person to be apprehended for such offence, and he may take the examination of the person so apprehended, and the information of all who can give material evidence against him; and put the same in writing, and bind over the witnesses to the *King's Bench* or gaol delivery, and certify the proceedings to the same court to which he shall bind over such informers. 2 *Hawk. c.* 8. *s.* 34.

Power of justices of peace in respect of this offence.

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## PRESENTMENT.

A PRESENTMENT, properly so called, is the notice taken by the grand jury of any offence from their own knowledge or observation, without any bill of indictment* laid before them at the suit of the king, as the presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment before the party presented can be put to answer to it. 4 *Black. Com.* 301.

But there are other presentments authorized to be made by particular acts of parliament, by justices of the peace, churchwardens, constables, and surveyors, of the highways, and these are treated of under the respective titles to which they belong.

*Principal and accessary.* See ACCESSARIES.

*Prisons.* See GAOLS, &c.

*Prison breaking.* See ESCAPES.

*Privy counsellor, assaulting of.* See FELONY (without Clergy, § *Privy counsellors*).

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* For the difference between indictments and presentments, see title INDICTMENTS in p. 25 supra.

# PROCESS.

What it is.

PROCESS generally imports the writs which issue out of any court, to bring the party to answer, or for doing execution. *Comyn's Dig. tit. Pro.* (A. 1.)

And it hath its name, because it *procedeth* or goeth out upon former matter, either original or judicial. *Lambarde*, 519.

Power to issue process incident to a power to hear and determine.

When the king grants an authority of *oyer* and *terminer*, the power to issue process is incident; for there cannot be *oyer*, if the party does not appear, or be brought by process. *Comyn's Dig. tit. Pro.* (A. 1.)

So also where a statute doth give power to justices out of sessions to inquire, hear, and determine; there they may by necessary consequence make process to cause the party to come and answer, otherwise they cannot proceed to hear and determine and this may be either before or after presentment or indictment, as the several statutes do require: before presentment or indictment it is called *a warrant*; after presentment or indictment, it is properly called *process*. *Dalton*, c. 193.

And by the express words of the commission of the peace*, the justices in sessions have power to make and continue processes upon indictments against the persons indicted, until they can be taken, surrender themselves, or be outlawed.

No need of process when defendant appears.

From what has been premised, it is plain that there can be no need of process when the defendant is present in court, but only when he is absent. 2 *Hawk.* c. 27.

Justices of peace can only award process in their proper counties.

And no process without writ can be well awarded on an indictment from any court out of the country wherein it sits; but by writ, it may be well awarded into any county of *England*, either by the *King's Bench*, justice of *Eyre*, or justices of *Oyer and Terminer*; but justices of the peace have not this power. 2 *Hawk.* c. 27. s. 1, 2, 3.

To be in the name of the king.

All process out of the king's courts ought to be in the name of the king. *Comyn's Dig. tit. Pro.* (A 2.) 2 *Hawk.* c. 27. s. 8.

And if it issue from the court of *King's Bench*, it ought to be under the teste of the chief justice, or of the senior judge of the court if there be no chief justice. 2 *Hawk.* c. 27. s. 8.

And if it issue from any other court, there seems to be the same reason that it ought to be under the teste of the first in the commission, and that such a teste is sufficient; for though one justice has no authority to take an indictment, or to proceed upon it, yet, according to *Hawkins*, the consequence does not

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* See p. 118 supra.

follow, that therefore the process cannot be tested by less than two. 2 *Hawk.* c. 27. s. 8.

And a non omittas.

And it seems that in every suit, to which the king is a party, the process ought to have the non omittas clause, viz. *that you omit not, by reason of any liberty in your baliwick, &c.* 2 *Hawk.* c. 27. s. 5. *Dalton*, c. 193.

Process in felony.

It seems certain that a capias is the first process in all indictments of treason or felony. 2 *Hawk. c.* 27. *s.* 15.

And it is said to be agreed, that one capias, before the award of the exigent, hath always been sufficient in an indictment or appeal of death or high treason. 2 *Hawk. c.* 27. *s.* 116.

But two capias are required in all indictments of any other felony, by stat. 25 *Ed.* 3. *c.* 14; and yet the provision in that statute* being in most cases found impracticable, *Hale* says, that at this day the process in case of an indictment of any felony, is only one capias, and then an exigent. 2 *Hawk. c.* 27. *s.* 116. 2 *Hale's Hist.* 195.

Escapes.

And if a defendant appear to an indictment of felony, and afterwards, before issue joined, make an escape, either from his bail or from prison; the common capias alias and pluries shall be awarded against him, unless there had been an exigent before, in which case a new exigent shall be awarded. 2 *Hawk. c.* 27. *s.* 19.

Process in cases under the degree of felony.

As to an indictment for any crime, whether against the common law or statute, *under the degree of treason or felony*, except in such cases wherein other process is directed by some statute, *Hawkins* says, it is clear that a venire facias (I) which is but in nature of a summons to cause the party to appear) is a proper process to be first awarded; and that if it appears by the return of such *venire*, that the party has lands in the county where he may be distrained, the distress (II) infinite shall be awarded

* See these in p. 479 supra.

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(I.) Form of a venire, according to *Dalton.*

*GEORGE the Third, by the grace of God, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, and so forth: To the sheriff of the county of* M. *greeting, we command you, that you omit not, by reason of any liberty in your bailiwick, but that you cause* O O *of ——— in your said county, yeoman, to come before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county, committed at ——— in your said county, on the — — day of ——— next ensuing, to answer unto us upon certain articles presented against him, the said* O O, *and have you there then this precept. Witness ——— at ——— the ——— day of ——— in the ——— year of our reign.*

from time to time, till he do appear; and by force thereof, he shall forfeit on every default so much as the sheriff shall return upon him in issues—but that if a nihil be returned on such a venire, a capias alias and pluries shall issue*. 2 *Hawk. c.27. s.8, 9.*

But it seems that the issuing of a venire facias, previous to the issuing of writ of *capias*, is not absolutely necessary; for in the case of *Bengough and another* v. *Rossiter, Hil.* 32 *Geo.* 3, it was agreed by the court, that a sheriff is justified in executing a capias, although no venire is previously issued. 4 *Term Rep.* 506.

Bench warrants.

And it is the practice of the *Middlesex* sessions, when bills of indictment are found by the jury to be true, to grant upon the application of the prosecutors, but not till after the grand jury are discharged, bench warrants (III) against the parties indicted, to bring them into court to answer. *Cr. Cir.* 36.

And if no application is made for a warrant during the sitting of the session, the prosecutor may afterwards apply to the clerk

* For the form of writ of *capias*, see title OUTLAWRY.

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(II.) Form of a distringas, from *Dalton.*

*George the Third, by the grace of God, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, and so forth: To the sheriff of the county of* ——— *greeting, we command you, that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and distrain* O O *of* ——— *in your county, yeoman, by all his lands and tenements, &c. and that you answer for the issues thereof, &c. and that you have his body before our justices assigned, &c.* [proceeding as in the venire.]

(III.) *The form of such* Bench *warrant.*

*Middlesex.* } To all constables, headboroughs, and other his majesty's officers and ministers within the county of *Middlesex*, and to every of them whom it may concern.

*These are to will and require, and in his majesty's name to charge and command you, upon sight hereof, to bring before us his majesty's justices of the peace of the county aforesaid, at the sessions of the peace now holden at the New Sessions House on* Clerkenwell Green, *in and for the said county, the body of* John Doe, for a trespass and assault (specify the offence), (*if the court be then and there sitting*), *or if not, before us, or some other of his majesty's justices of the peace of the same county, to find sufficient sureties for his personal appearance at this present session, to answer the same, and all such other matters as on his majesty's behalf shall be objected against him; and if he cannot be taken during this present session, that then so soon after as he shall be taken, you bring, or cause him to be brought before us, or some other his majesty's justices of*

of the peace, who will certify (IV) that a bill of indictment is found; upon whose certificate, any one of the justices of *King's Bench*, or a justice of peace, will grant a warrant to take the party indicted, and will take sureties or bail * for his personal appearance at the next session, to plead to such indictment; or will commit him for want of sureties. *Cr. Cir.* 36.

And the warrant of the judge is directed to his tipstaff, and to all constables and other peace officers, and extends all over *England;* but the justice's warrant, on such certificate, is executed by a constable or headborough, and extends no farther

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* Justices of the peace very seldom oblige defendants *to give notice of the bail* they intend to put in, unless for some very heinous offence: but in all cases, if the defendant be arrested by virtue of a judge's warrant, he must remain in custody till such time as he has given twenty-four hours notice at least to the prosecutor or his solicitor, of the bail he intends to put in before the judge; in order that the prosecutor may in that time inquire after the sufficiency of the bail. *Cr. Cir.* 27.

And if a defendant should be arrested on a judge's warrant, in any place remote from the judge's chambers, or in the vacation time, when the judges are out of town, or on their circuits, a justice of the peace may take bail, and the defendant must give the like notice as before-mentioned. *Cr. Cir.* 38.

*The form of which notice is as follows:* The *King* against *O O.* Mr. *P. G.* Prosecutor, *Take notice, that I shall put in bail before the honourable Mr. Justice* B, *at his chambers in* Serjeants Inn, Chancery Lane, *to-morrow in the evening, at the hour of seven, for my appearance at the next general session of the peace, to be holden at the New Sessions House on* Clerkenwell Green, *in and for the county of* Middlesex, *then and there to answer and plead to the indictment you have preferred against me, for assaulting you. The names of the bail are —— of —— and —— of —— Dated this —— day of ——* 17 —

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*the peace of the said county, to find sufficient sureties for his personal appearance at the next session of the peace to be holden for the said county, to answer as aforesaid, and further to be dealt withal according to justice: Hereof you are not to fail at your peril. Dated in open session at the New Sessions House aforesaid, this* ——— *day of* December, *in the year of our Lord* ———

IV. Form of the certificate.

Middlesex. } *These are to certify, that at the general quarter session of the peace holden at the New Sessions House on* Clerkenwell Green, *in and for the county of* Middlesex, *on* Monday *the* ——— *day of* ——— *last past,* O O *was, and stands indicted for a trespass and assault on* P G, *yeoman, to which indictment the said* O O *hath not as yet appeared or pleaded. Dated this* ——— *day of* ——— *in the year of our Lord* ———

than the particular county for which they are officers, unless the same is indorsed by a justice of the other county *. *Ibid.*

Process against inhabitants of a parish.

Where the inhabitants of a parish are indicted or presented, the process is first, a venire, then a distringas. *Cr. Cir.* 18.

Process to be awarded into a foreign county before exigent.

By 8 *Hen.* 6. c. 10, on indictments for treason, felony, or trespass, against *persons dwelling in other counties than where the indictment is taken*, before any exigent awarded, presently after the first writ of capias awarded and returned, another writ of capias shall be awarded, directed to the sheriff of the county, whereof the person indicted was supposed to be conversant by the same indictment, returnable before the same justices, or others before whom he is indicted, at a certain day, containing the space of three months from the date of the said last writ, where the counties are holden from month to month; and where they are holden from six weeks to six weeks, he shall have four months, until the return of the same writ; by which writ of second capias, it shall be commanded to the same sheriff to take the person indicted by his body, if he can be found within his bailiwick; and if he cannot be found within his bailiwick, that the said sheriff shall make proclamation in two counties before the return of the same writ, that he which is so indicted shall appear before the said justices, or others in the county, liberty, or franchise where he is indicted, at the day contained in the said last writ of capias, to answer to the king of the felony, treason, or trespass whereof he is so indicted: after which second writ of capias so served and returned, if he which is so indicted come not at the day of the same writ of capias returned, the exigent shall be awarded; and every exigent and outlawry otherwise awarded or pronounced, shall be void †. *s.* 2, 3.

And if any such indictment shall be removed by certiorari then before the exigent awarded, presently after such first capias returned, another writ of capias shall be directed as before, returnable before the king in his bench. 10 *Hen.* 6. *c.* 6.

And every person indicted in the form aforesaid, after he is duly acquitted by verdict, shall have an action upon his case against the procurer of such indictments; and if such procurer be attainted thereof, the plaintiff shall recover treble damages. 8 *Hen.* 6. *c.* 10. *s.* 4.

But this shall not extend to indictments taken in the county of *Chester* ‡. *s.* 5.

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* For the manner of backing warrants and executing the same, see stat. 24 *Geo.* 2. *c.* 55, in p. 138 supra, and in vol. i. p. 198.

† This is to be taken not as utterly void, but only voidable by writ of error. 2 *Hawk. c.* 27. *s.* 127.

‡ But it may be awarded into the county palatine of *Lancaster*, and *Durham*; and it seems that it shall be directed to, and returned by the chancellor of *Lancaster* or bishop of *Durham*; and it hath been said, that if he will not return it, the exigent may be awarded as well as if he had returned it; because the court (of the sessions at least) cannot compel

Also if any person be indicted of felony or treason, and at the time of the same felony or treason supposed, was conversant within the county whereof the indictment maketh mention, the like process shall be made against the person so indicted, as hath been formerly used. *s.* 6.—*that is without issuing a capias to the sheriff of any other county.*

Upon these statutes, saith *Sir Matthew Hale*, little effect hath been obtained, for if the party were conversant in the county where the felony or treason was committed (as indeed he cannot be otherwise) then he may be named of that place where the fact was committed in the indictment, and then the process is to go as at common law before the statutes; and this is the usual course at this day, that if the felony be committed in A, in the county of B, the indictment runs only, that J S, late of A, in the county of B, where the indictment is taken. 2 *Hale's Hist.* 106.

But if a defendant be named of no certain place at present, but only late of B, and late of C, and late of D, being all of them in counties different from that wherein the prosecution is commenced, a capias shall go to the sheriff of every one of these counties. 2 *Hawk. c.* 27. *s.* 126.

And it is said, that by the equity of this statute, if a person indicted in one county be imprisoned in another, the justices may award an habeas corpus to remove him before themselves. *Lambarde,* 526.

It seems to be agreed, that every suit, whether civil or criminal, and also any process in such suit against jurors, ought to be properly continued from day to day, from its commencement to its conclusion, without any the least gap or chasm; and that the suffering any such gap or chasm, is properly called a discontinuance; and the continuing of the suit by improper process, as by a capias instead of a distringas, or by giving the parties an illegal day, is properly called a miscontinuance. 2 *Hawk. c.* 27. *s.* 89. Discontinuance of process.

And process is generally said to be discontinued in the following: 1. Where the second is not tested on the very same day on which the first is returnable. 2. Where there is a term (or sessions) between the teste and the return of a capias, that the defendant may not be imprisoned an unreasonable time; but it is no objection to an exigent, that it is not returnable on the next term or sessions after its teste, becase it must allow time enough for five counties to be holden between its teste and return. 3. Where after issue or demurrer, the court gives the parties a day to a distant term (or sessions) without making any continuance to that immediately following. 4. Where the term (or sessions) to which the suit is continued, is adjourned, and the suit is not ad-

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him to return it, and the prosecution might be unreasonably delayed, if the proceedings were to be stayed till he should return it. 2 *Hawk. c.* 27. *s.* 125.

journed accordingly. 5. Where any of the parties are described in any continuance of the suit, whether on the roll or by process, by name or addition variant from those in the original, though only in one letter. 6. Where a venire or distringas are issued without any award, on the roll to warrant them. 2 *Hawk.* c. 27. s. 90, 91, 92, 93 94. 100.

Also all causes, whether civil or criminal, are discontinued, or to speak more accurately, put without day, by the justices before whom they were depending, not coming on the day to which they are continued, whether such absence were occasioned by death or any other cause: and it is agreed, that a cause so discontinued, or put without day, cannot be revived without a re-summons or re-attachment. 2 *Hawk.* c. 27. s. 106.

And it seems generally to be taken as an undoubted principle, that a discontinuance by suffering a total chasm in the proceedings, whether on the roll, or in the process, by not giving a fresh continuance instantly upon the determination of the precedent, shall never be aided by any appearance or pleading over: but it is holden by the greater number of authorities, that if the original be good, and the defendant present in court, he shall be compelled to answer to such original, let the process whereon he came in, or the execution of it, be never so erroneous or defective, so that it never were discontinued, for the end of process is to compel an appearance, and that end being served, and a legal charge appearing against the defendant, no way discontinued, the law will not so far regard a slip in the process, as to let the defendant out of court in order only to have him brought in again in better form. 2 *Hawk.* c. 27. s. 107.

By whom process to be executed.

It is laid down as a general rule, that wherever the king is party to the suit (as he certainly is to all informations and indictments,) the process ought to be executed by the sheriff, and not by the bailiff of any franchise, whether it have the clause *non omittas* or not, and whether the defendant be within a franchise, or in the county at large: for the king's prerogative shall be preferred to any franchise: but it is said, that this is to be intended only where, in the grant of the franchise, no mention is made of causes to which the king is a party. 2 *Hawk.* c. 27. s. 17.

But no person upon the Lord's day shall serve or execute any writ, process, warrant, order, judgment, or decree, *except in cases of treason, felony, or breach of the peace*; but such service shall be void, and the person executing the same, liable to answer damages to the party grieved, in the same manner as if he had done it without any writ, process, warrant, order, or judgment at all. 29 *Car.* 2. c. 7. s. 6.

Process may be stayed by putting in bail.

The processes (as well of capias as of outlawry) may be stayed by a supersedeas issuing from other justices (out of sessions), testifying that the party hath come before them, and hath found

sureties for his appearance to answer to the indictment, or to pay his fine. *Dalton*, c. 123.

But if a defendant, being indicted at the sessions for a bailable offence, be arrested upon the sessions' process of capias, the sheriff can only admit him to bail by *a recognizance*, for he has no authority in such case to take a bond for his appearance. 4 *Term Rep.* 505.

Defendant arrested on a capias, to give in bail by recognizance.

For the authority of justices of peace to take bail on *process*, see title *BAIL*, div. ii.

For cases in which doors may be broken to execute *process*, see title *ARRESTS*, div. vii.

For *process* on informations, see title *INFORMATION QUI TAM* *.

For *process* of outlawry, see title *OUTLAWRY*.

*Profaneness.* See Blasphemy, Public Worship, Sabbath, *and* Theatres.

*Prophecies.* See Seditious Practices.

*Protestant dissenters.* See Dissenters.

*Provisors.* See Præmunire.

* In p. 63 supra.

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# PUBLIC WORSHIP.

NO person shall be received as a lecturer, or allowed to preach or read any lecture or sermon, without licence from the bishop, and assenting to the 39 articles, and reading the common prayer before his first sermon, and on the first lecture day of every month; on pain of three months imprisonment for every offence, by two justices of the peace, on certificate from the bishop of the offence committed. 13 & 14 *Car.* 2. *c.* 4. *s.* 19, 20, 21.

Qualification of lecturers.

If any person shall speak irreverently of the sacrament of the Lord's supper, he shall suffer imprisonment, and make fine and ransom at the king's will; and three justices (1 qu.) may take information by the oaths of two witnesses, and afterwards at the sessions may enquire thereof by the oaths of twelve men upon indictment. And they shall, at the sessions where the offender

Reviling the sacrament.

shall be indicted, direct a writ to the bishop to appear by himself or deputy at the trial: but no person shall be molested, but within three months after the offence committed. 1 *Ed.* 6. *c.* 1.

Also by the ecclesiastical canons, impugners of the book of common prayer, of the 39 articles, of the rites and ceremonies of the church of *England*, of the episcopal government of the church, or of the form of ordering and consecrating archbishops and bishops, shall be *ipso facto* excommunicated, and not restored but upon repentance and public recantation. *Can.* 4, 5, 6, 7, 8.

Disturbers of public worship.

By 1 *Mar. sess.* 2. *c.* 3, if any person shall disturb *a preacher in his sermon*, by word or deed, he shall be apprehended and carried before a justice of the peace, who shall commit him to safe custody, and within six days he and another justice shall examine the fact, and if they find him guilty by two witnesses, or confession, they shall commit him to gaol for three months, and further to the next sessions; and if at the sessions he repents and is reconciled, he shall be discharged on finding sureties for his good behaviour for a year; if not, he shall be continued in gaol till he does, saving the ecclesiastical jurisdiction, and he shall not be punished both ways.

Also, by 1 *Will. & Mar. c.* 18, if any person shall willingly and of purpose come into any church, chapel, or other congregation, permitted by the act of toleration, 1 *Will. & Car. c.* 18, and disquiet and disturb the same, or misuse any preacher or teacher, he shall, on proof thereof before one justice by two witnesses, find two sureties to be bound by recognizance in 50*l.*; and in default thereof, shall be committed till the next sessions, and on conviction there of the said offence, he shall forfeit to the king 20*l.* *s.* 18.—The like is also enacted by 31 *Geo.* 3. *c.* 3. *c.* 32. *s.* 10, *in regard to the disturbers of any Roman catholic meeting permitted by that act* *.

And the court of *King's Bench* hath refused to grant a certiorari to remove an indictment at the sessions, *for a person not behaving himself modestly and reverently at the church* during divine service; which although punishable by ecclesiastical censures, yet the court conceived it a proper cause within cognizance of the justices of the peace. 1 *Keble*, 497.

See also *BLASPHEMY, COMMON PRAYER, DISSENTERS.*

And for the offence of not resorting to some place of public worship, see title *CHURCH.*

* See title Papists, p. 546 supra.

# PURVEYANCE.

ANCIENTLY the king's court was supplied with necessaries from the ancient demesnes of the crown, which were manured for that purpose; and in respect thereof, the tenants of those lands had many privileges which they still enjoy; but this method being found to be troublesome and inconvenient, was by degrees disused, and afterwards the king used to appoint certain officers to buy in provisions for his household, who were called PURVEYORS, and claimed many privileges by the prerogative of the crown, and seem to have had the pre-emption of all such victuals as were brought by any one to sell again. 1 *Hawk.* c. 47. s. 1.

The exercise of this prerogative being productive of much inconvenience, occasioned many statutes, all of which having been found by experience not to have sufficiently provided 'against 'the oppressions of persons employed for making provisions for 'the king's household, carriages, and other purveyance for his 'majesty;' and several counties having found themselves obliged to submit to sundry rates and taxes, and compositions to redeem themselves from such vexations and oppressions, as it is recited by 12 *Car.* 2. *c.* 24, IT WAS ENACTED by the said statute, that from thenceforth no money or other thing shall be taken for any provision, carriages, or purveyance for his majesty. *s.* 12.

And no person by any authority, by colour of buying or making purveyance for his majesty, or any queen, or the children of any king or queen, or for their household, shall take 'any timber, fewel, cattle, corn, hay, straw, victual, carriage, 'or other thing, of any subjects, without the full consent of the 'owner, obtained without menace or force;' nor shall summon or require any subjects to find any horses or other cattle, carts, ploughs, wains, or other carriages, for the use of his majesty, or of any queen, or of any child of any king or queen, for the carrying their goods, without free consent. *s.* 3.

Also no pre-emption shall be claimed in behalf of his majesty, or of any queen, or of any of the children of the royal family. 'And if any person shall make purveyance, or take away car'riages or other things aforesaid, it shall be lawful for two jus'tices of the peace, and the constables of such parish or village, 'at the request of the party grieved, to commit the parties of'fending to gaol till the next sessions, there to be indicted and 'proceeded against for the same;' and the officers and inhabitants of the village or parish shall be assistant:—and moreover, the party grieved shall recover his treble damages, and treble costs. And if any person shall cause any action grounded on

this statute to be stayed before judgment, by any authority, save only of the court where such action shall be depending; or after judgment, shall cause execution to be stayed, save only by writ of error or attaint, or order of such court where such writ of error or attaint shall be depending; the person offending shall incur the penalties of *præmunire*, 16 *Ric.* 2. *c.* 5. Provided that this act extend not to prejudice his majesty's duties of tin in the stannaries of *Devon* and *Cornwall*, nor the ancient duties of butlerage and prizage of wines. *s.* 14.

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# PROMISSORY NOTES AND BILLS OF EXCHANGE.

For the duty thereon, see title *STAMPS.*

Promissory notes and bills of exchange under 20*s.* void.

IN *order to restrain the negociation of promissory notes and inland bills of exchange for small sums of money,* IT IS ENACTED by 15 *Geo.* 3. *c.* 51. (made perpetual by 27 *Geo.* 3. *c.* 16.) that all promissory or other notes, bills of exchange, draughts, or undertakings in writing, being negociable and transferable, 'for the payment of any sum or sums of money, less than 20*s.* 'in the whole, shall be absolutely void, and of no effect. 15 *Geo.* 3. *c.* 51. *s.* 1.

And if any person shall, *by any art, device, or means whatsoever,* publish or utter any such notes, bills, draughts, or engagements for a less sum than 20*s.* or on which less than 20*s.* shall be due, and which shall be in anywise negociable, or shall negociate the same, every such person shall forfeit and pay, for every such offence, not exceeding 20*l.* nor less than 5*l.* *s.* 2.

And by the third section of the same act it is enacted, that 'the justice or justices before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made 'out in the manner and form following:' specifying a summary form of conviction, and directing the manner of levying and applying the penalty. Now the preceding part of the act, although it is before referred to, by the words *convicted as aforesaid,* has given no power to the justices to convict; the recovery of the penalty before a justice of peace is therefore impracticable.

Restrictions as to notes and bills for 20*s.* and under 5*l.*

It is also enacted by 17 *Geo.* 3. *c.* 30. (made perpetual by 27 *Geo.* 3. *c.* 16.) that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being nego-

ciable or transferable, for the payment of 20*s*. or above that sum and less than 5*l*. or on which 20*s*. or above, and less than 5*l*. shall remain undischarged, shall specify the names and places of abode of the persons respectively to whom, or to whose order the same shall be made payable; and shall bear date before, or at the time of drawing or issuing thereof, and not on any day subsequent thereto; and shall be made payable within 21 days next after the day of the date thereof, and shall not be transferable or negociable after the time thereby limited for payment; and every indorsement thereon shall be made before the expiration of that time, and shall bear date at or not before the time of making thereof, and shall specify the name and place of the person to whom, or to whose order the money is to be paid; and the signing of every such note, bill, draught, or undertaking, and also of every such indorsement, shall be attested by one subscribing witness at the least; otherwise such note, bill, draught, or undertaking, shall be absolutely void. *s*. 1.

And all such notes, bills, draughts, or undertakings, and endorsements, may be in the form or to the effect following:

[Place, day, month, year]

*Twenty-one days after date I promise to pay to* A B, *of* ——— *or his order, the sum of* ——————— *for value received by*
*Witness* C D.
E F.

Indorsement [Place, day, month, year]
*Pay the contents to* G H *of* ——— *or his order.*
*Witness* A B.
I K.

If it is upon advice say—*Twenty-one days after date, pay to* A B, *of* ——— *or his order, the sum of* ——————— *value received, as advised by* C D.

And the publishing, uttering, or negociating notes, bills of exchange, drafts, or undertakings, contrary to this act, is prohibited and restrained, under the like penalties, *and to be recovered* and applied, as for offences against the former act. *s*. 2. ‘So that it is equally impossible to recover any penalty under ‘this act before a justice of peace.’

But by the stat. 37 *Geo*. 3. *c*. 32. *s*. 1, and 44 *Geo*. 3.*c*. 5, and 17 *Geo*. 3. *c*. 30, so far as the same relate to the making void of promissory notes, draughts, or undertakings in writing, PAYABLE ON DEMAND* to the bearer, for any sum less than 5l.; and

* Consequently all the provisions contained in such acts, remain in full force as to all notes for less than 5*l*., which may be made *payable* after date or order.

also to restrain the publishing and negociating of them, shall be suspended until six months after the ratification of a definitive treaty of peace.

But if any person liable to the payment of any note, shall neglect to make full payment in money of the sum for which the same shall be given (by 37 *Geo.* 3. *c.* 61. *s.* 3, for seven days after demand thereof made by the holder) any justice of the peace, on complaint, may summon the defaulter; and after his appearance, or in default thereof, on due proof on oath of such summons having been given, he shall determine the complaint, and award such sum to be paid by the defaulter to the complainant, as shall appear to be due on the note, with such sum for costs, not exceeding 20*s.* as to such justice shall seem meet; and if any person shall neglect to pay the sum so adjudged, the justice shall cause the same to be levied by distress and sale of the defaulter's goods. 37 *Geo.* 3, *c.* 32. *s.* 3.

Also, by 37 *Geo.* 3. *c.* 28, all promissory notes, and other notes for payment of money, which, since *March* 2, 1797, have been, or which hereafter shall be issued by the Bank of *England*, payable to bearer, notwithstanding the same shall have been, or shall be, issued for the payment of any sum under 5l. shall be good in law. *s.* 1.

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# QUAKERS.

*I. Concerning the affirmation of quakers in general.*

*II. In what manner quakers are to affirm the effect of the oaths of allegiance, supremacy, and abjuration.*

*III. How tithes, church rates, and other dues, may be recovered from quakers.*

The privileges which quakers enjoy under the toleration act, in common with other dissenters, are treated of under the title DISSENTERS.

*I. Concerning the affirmation of quakers in general.*

The affirmation of quakers to be received instead of an oath.

The 7 and 8 *Will.* 3. *c.* 34, after reciting that 'quakers refusing to take an oath in courts of justice and other places, were 'frequently imprisoned and their estates sequestered, by process 'of contempt issuing out of such courts, to the ruin of themselves 'and families,' ENACTS for remedy thereof, that every quaker who shall be required upon any lawful occasion to take an oath, in any case where by law an oath is required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration. *s.* 1.

Which said solemn affirmation shall, by 8 *Geo.* 1. *c.* 6, be in the words following, viz.

I A B *do solemnly, sincerely, and truly declare and affirm.*

And by 22 *Geo.* 2 *c.* 46, in all cases wherein by any act of parliament now in force, *or hereafter to be made**, an oath is required, the affirmation of a quaker in the above form shall be allowed instead of such oath; although no express provision be made for that purpose in such act. *s.* 36.

And if any person making such affirmation shall be convicted of having wilfully, falsely, and corruptly affirmed any thing, which if deposed upon oath would have amounted to wilful and corrupt perjury, he shall incur the like pains and penalties as by law are inflicted on persons convicted of wilful and corrupt perjury. 7 & 8 *Will.* 3. *c.* 34. *s.* 3. 8 *Geo.* 1. *c.* 36. *s.* 2. 22 *Geo.* 2. *c.* 46. *s.* 37.

Except in criminal causes, &c.

But no quaker shall by virtue of these acts be qualified to give evidence in any *criminal cause*, or to serve on juries, or to bear any office or place of profit in the government. 7 & 8 *Will.* 3. *c.* 34. *s.* 6. 22 *Geo.* 2. *c.* 46. *s.* 37.

What shall be considered criminal causes.

*Any criminal cause.*] It is by these words only that quakers are excluded from giving evidence in criminal causes; for upon the principles of the common law, there is no particular form essential to an oath to be taken by a witness; the purpose of it is to bind his conscience, and therefore, every man of every religion is in general esteemed to be bound by that form which he himself thinks will bind his conscience most†. *Cowper's Rep.* 389.

And it is much to be lamented, that the affirmation of a quaker

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* Therefore the authority frequently given by subsequent acts to receive the affirmation of quakers seems to be unnecessary.

† Hence Jews, Mahometans, Gentoos, and other persons sworn according to the ceremonies of their respective religions, have been admitted to give evidence; and there is no distinction taken between such persons swearing in a civil or criminal case. *See vol.* i. *p.* 757, 758, *and Cowper's Rep.* 389, 390.

has not been put on the same footing as an oath in all cases whatsoever: for there does not appear to be any sufficient reason against it, the punishment of the breach of it being the same. *Cowper's Rep.* 380, 389.

However, as the law now stands grounded on this positive exception in the statute, it seems that in all causes *technically* criminal the affirmation of a quaker is inadmissable.

It therefore cannot be received in an appeal of murder, for this is not a civil suit between party and party, but only a different mode of prosecuting an offender to death. Instead of proceeding by indictment in the usual way, it allows the relation to carry on the prosecution for the purpose of attaining the same end, which the king's prosecution would have had, if the offender had been convicted, namely, *execution*, and therefore falls under the head of criminal cases. 2 *Strange*, 856. *Cowper's Rep.* 392.

And it is clear that a quaker's affirmation cannot be read in support of a criminal charge. 2 *Burrow's Rep.* 1117.

Neither ought it to be received upon the stat. of hue and cry *, in order to sue the hundred for damages in the case of robbery, for a quaker cannot lay a foundation for the action without an affidavit. *Cowper's Rep.* 383.

And from the same principle it cannot be admitted in order to obtain sureties of the peace or good behaviour, or a warrant to search for stolen goods or the like.

A quaker's affirmation is also inadmissible upon a motion for an information for a misdemeanor. 2 *Strange*, 872.

But if an information is moved for against a quaker, his affirmation may be received, and it may be read in defence of the criminal charge in order to exculpate himself. 2 *Burrow's Rep.* 1117.

For as to his own answers, he is a good witness. *Cowper's Rep.* 392.

Yet if the affirmation be offered, as a *collateral* evidence, in assistance of the exculpation of another person, where the quaker himself is not charged at all, it ought not to be read. 2 *Burrow's Rep.* 1117.

But a *penal action*, though in form a criminal action, is as much a *civil* action, as an action for money had and received; and has never yet been placed under the head of criminal law or crimes, and consequently a quaker may be received to give evidence therein upon his solemn affirmation. *Cowper's Rep.* 383. 394.

And this, although an indictment may lie for the same offence; for in cases where an action and indictment both lie for the same act, as in assault, imprisonment, fraud, bribery and the like, a quaker is an admissible witness in the action, though not on the indictment. *Cowper's Rep.* 383.

And in the case of *the K.* v. *Turner*, on a motion to quash an

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* See title Hue and Cry.

appointment of overseers, the court said, though the prosecution was in the king's name, yet the *end* of it was a *civil remedy*, and therefore allowed a quaker's affirmation to be read. 2 *Strange*, 1219.

So also it seems that an attachment for non-performance of an award may be granted upon a quaker's affirmation *. *Cowper's Rep.* 394.

*Or bear any office or place of profit in the government.*] The act 26 *Geo.* 2. *c.* 18, requiring a certain *oath* to be taken and subscribed upon admission to the freedom of the *Turkey* company, it was made a question in the case of *the K.* v. *March*, whether a quaker could make and subscribe his solemn affirmation and declaration to the effect of the oath, and be admitted to the freedom of the company, without actually taking the oath appointed; and it was contended, 1st, that the act 22 *Geo.* 2. *c.* 46, did not mean to give quakers any privilege of affirming instead of swearing, where they were not under some penalty or forfeiture, or had not some antecedent right vested in them. 2dly, That this freedom was *a place of profit in the government*, within the meaning of the exception in the act. But the court were clearly of opinion, that the quaker might take the solemn affirmation instead of the oath, and that such freedom was not a place of profit in the government within the meaning of the exception in the act †; and Lord *Mansfield* said, that the man's claim was nothing more than to be admitted into a company of merchants trading to a particular part of the world; and that there could be no pretence to call this a place of profit in the government. 2 *Burrow's Rep.* 1004.

## II. *In what manner quakers are to affirm the effect of the oaths of allegiance, supremacy, and abjuration.*

All persons may be required to take the oath of allegiance.

By 5 *Eliz.* c. 1, commissioners may be appointed by the Lord Chancellor to tender (*the oaths of supremacy, and allegiance*, 1 Will. & Mar. st. 1. c. 8. s. 4.) to such persons as, by their commission, they shall be authorized to tender the same unto. *s.* 7.

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* Of course the case of *Robins* v. *Sayward*, reported in 1 *Strange*, 441, where the court refused to grant an attachment for a similar offence, because it was moved for, on the affirmation of a quaker; saying, that though it were in a suit between party and party, that yet it was a criminal prosecution within the statute, seems not to be law at this day; for Lord *Mansfield* in the above case reported by *Cowper*, said that the exception might as well hold on an affirmation taken to hold to bail; because it deprives a man of liberty.

† The same point seems to have before determined, in the case of the *K.* v. *Morris*, where a mandamus was granted to admit a quaker to the freedom of the city of *Lincoln*, he having served an apprenticeship there for seven years. 1 *Ld. Raym.* 337. *Carth.* 448. 5 *Mod.* 402.

And if any person appointed by such commissioners to take the said oaths shall refuse to take them on a tender thereof, he shall incur a *præmunire*. *s.* 8.

And such refusal shall be certified within 40 days before the king in his court of *King's Bench*, by those who have authority to tender the said oath, under the penalty of 100*l.* and the sheriff of the county wherein the said court shall sit may impanel a jury, who shall inquire of such refusal, in such manner as if it had happened in the same county. *s.* 9.*

Also by 7 *Jac.* 1. *c.* 6, the privy council, and every bishop in his diocese may require any baron or baroness of the age of eighteen years, or above, to take *the oaths of allegiance and supremacy* (1 Will. & Mar. st. 1. c. 8. s. 4.); and *any two justices of the peace* (1 Qu.) may require any person of the age of eighteen years, under the degree of a baron or baroness, to take the oath.

And if any person of or *above* the said age and degree shall be presented or convicted for not coming to church, or not receiving the communion, before the ordinary, or other having lawful power to take such presentment; three of the privy council, whereof the lord chancellor, lord treasurer, lord privy seal, or principal secretary to be one, shall require such person to take the oath.

And if any other person of the said age, and *under* the said degree, shall be presented or convicted for not coming to church, or receiving the sacrament; or, *if the minister, constable, and churchwardens*, or any two of them, *shall complain to any justice of peace* near adjoining to the place where any person complained of shall dwell, *and the said justice shall find cause of suspicion*, any justice shall require such person to take the oath.

And if any person of the age of eighteen years shall refuse to take the oath duly tendered, the persons above authorised may commit the offender to the common gaol until the next assizes or quarter sessions, where the oath shall be again required; and if the person shall refuse to take the oath, such person shall incur the penalty of *præmunire*, except women covert, who shall be committed only to prison till they take the oath. *s.* 26.

And all such refusers are disabled to execute any public office of judicature, or bear any other office (being no office of inheritance) or ministerial function, or to practise the common or civil law, physic or surgery, or the art of an apothecary. *s.* 27.

And by 1 *Will.* & *Mar. sess.* 1. *c.* 8, persons refusing the oaths of allegiance and supremacy, being tendered to them by persons lawfully authorised to tender the same, shall be committed to the common gaol, or house of correction, by the persons making such

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* But *the trial* must be by a jury of the county wherein the oaths were refused; for the statute only authorizes *an indictment* by a jury of the county wherein the court sits. *Dyer*, 234.

a tender, for three months, unless they shall pay such sum, not exceeding 40*s.* as the persons who shall make such tender shall require of them, to be paid to the churchwardens or overseers for the relief of the poor of the parish where the offender did last inhabit; and if they refuse again at the end of three months they shall be imprisoned six months, or pay a sum not above 10*l.* nor under 5*l.* to be disposed of as aforesaid, and become bound with two sureties to be of good behaviour, and to appear also at the next assizes or gaol delivery; where if they refuse the said oaths, they shall be incapable of any office civil or military, and shall be bound to the good behaviour until they take the oaths; and in case such person shall refuse also to make the declaration against *transubstantiation*, such person shall suffer all penalties as a popish recusant convict. *s.* 9.

And further, by 7 & 8 *Will.* 3. *c.* 27, every person who shall refuse to take the oaths when tendered, or shall neglect to appear when summoned in order to have the oaths tendered, shall until he take the oaths be liable to the penalties inflicted upon popish recusants convict; and the persons tendering the oaths shall, upon every such refusal or default of appearance, record the names and places of abode of the persons refusing or not appearing, with the time of such tender or default, and certify the record to the justices of assize, oyer and terminer, or gaol delivery at their next session, who shall certify the same into the exchequer. *s.* 1.

Except quakers, who may make a declaration of fidelity and profession of their christian belief.

But by 1 *Will.* & *Mar. stat.* 1. *c.* 18, dissenters who scruple the taking any oath, shall make and subscribe a declaration of fidelity, and subscribe a profession of their christian belief. *s.* 13.

And the declaration of fidelity shall be made and subscribed in the following words: 8 *Geo.* 1. *c.* 6.

The form of their declaration of fidelity.

*I A B do solemnly and sincerely promise and declare, that I will be true and faithful to king* George; *and do solemnly, sincerely, and truly profess, testify, and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that wicked doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of* Rome, *may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person or prelate, state or potentate, hath or ought to have, any power, jurisdiction, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm.*

And the profession of their christian belief shall be in these words: 1 *Will.* & *Mar. stat.* 1. *c.* 18. *s.* 13.

The form of their profession of belief.

*I* A B *profess faith in God the Father, and in Jesus Christ his eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore; and do acknowledge the holy scrip-*

*tures of the old and new testament to be given by divine inspiration.*

Which declaration and subscription shall be made and entered upon record at the quarter sessions, and every such quaker that shall make and subscribe the declaration, and profession being thereunto required, shall be exempted from the penalties of all the statutes against popish recusants, or protestant nonconformists, and enjoy all benefits which any other dissenters shall enjoy by this act. 1 *Will.* & *Car. stat.* 1. *c.* 18. *s.* 13.

And every justice of peace may require any quaker to make and subscribe such declaration; and upon refusal, he is to commit him to prison, and to certify his name to the next quarter sessions; and if he shall upon a second tender at the quarter sessions, refuse to make and subscribe the declaration, he shall be recorded, and taken for a popish recusant convict, and incur all the penalties of the said laws*. *s.* 12.

And moreover, no quaker who shall refuse to make such declaration (to be administered at the request of any one of the candidates, by the sheriff, or returning officer) shall be admitted to give any vote for the election of any knight, citizen, burgess, or baron to serve in parliament. 7 & 8 *Will.* 3. *c.* 27. *s.* 19.

Also all suspected persons may be required to take the oath of abjuration.

Also, by 13 *Will.* 3. *c.* 6, it shall be lawful for any persons authorised to administer the oaths appointed in 1 *Will.* & *Car. st.* 1. c. 8, to tender the oath of abjuration to any person; and if any person to whom the oath shall be tendered shall neglect to take the same, the person tendering the oath shall certify the refusal to the next quarter sessions, and the refusal shall be recorded, and certified by the clerk of the peace into the *Chancery* or *King's Bench*. *s.* 13.

And by 6 *Ann*, c. 14, it shall be lawful for any two justices of peace (1 Qu.) or any other persons by her majesty appointed by order in the privy council, or by commission under the great seal, to summon all such persons as they shall suspect to be dangerous or disaffected, and tender the oath of abjuration, and at the next quarter sessions certify the names and places of abode of all persons refusing to take the oath, to be certified by the clerk of the peace into the *Queen's bench* : and if the persons certified shall not within the next term appear in the *Chancery* or *Queen's Bench*, where such certificate shall be returned, and take the oath and enter his so doing upon the certificate returned, he shall be adjudged a popish recusant convict and undergo the penalties thereof. *s.* 7.

Except quakers, who may affirm the substance thereof.

But by 6 *Ann*, *c.* 23, if any quaker shall refuse to take the oath, being tendered to him in pursuance of the last act, but shall instead thereof declare the effect of the said oath upon his solemn

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* See this matter also under title Dissenters.

affirmation, such quaker shall not be liable to any penalties mentioned in the above act. *s.* 13.

And by 8 *Geo.* 1. *c.* 6, such quaker shall take the effect of the said abjuration oath in the following words, *viz.*

*I* A B *do solemnly, sincerely, and truly, acknowledge, profess, testify, and declare, that king* George *is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging. And I do solemnly and sincerely declare, that I do believe the person pretended to be the prince of* Wales, *during the life of the late king* James, *and since his decease, pretending to be, and taking upon himself the stile and title of, king of* England, *by the name of* James *the third, or of* Scotland, *by the name of* James *the eighth, or the stile and title of king of* Great Britain, *hath not any right or title whatsoever to the crown of this realm, nor any other the dominions thereto belonging; and I do renounce and refuse any allegiance or obedience to him. And I do solemnly promise, that I will be true and faithful, and bear true allegiance to king* George, *and to him will be faithful against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my best endeavour to disclose and make known to king* George, *and his successors, all treasons and traitorous conspiracies, which I shall know to be made against him, or any of them. And I will be true and faithful to the succession of the crown against the said* James* *and all other persons whatsoever, as the same is and stands settled by an act intituled,* An act declaring the rights and liberties of the subject, and settling the succession of the crown, *to the late queen* Anne *and the heirs of her body being protestants; and as the same by one other act intituled,* An act for the limitation of the crown, and the better securing the rights and liberties of the subject, *is, and stands settled and entailed, after the decease of the said late queen, for default of issue of the said late queen, to the late princess* Sophia, *electress and duchess dowager of* Hanover, *and the heirs of her body being protestants. And all these things I do plainly and sincerely acknowledge, promise and declare, according to these express words, by me* The form.

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* After the death of the pretender, who assumed the title of king of *England*, by the name of *James* the third, it became absurd to renounce a person being dead; therefore the 6 *Geo.* 3. *c.* 53, (see title Oaths) has altered the form of *the oath of abjuration*, so as to renounce the descendants of the said *James*. 1 *Hawk.* 8*vo. ed.* 97. n. *b.*

But no provision has been made for altering the form of the quaker's affirmation in that respect, it therefore remains still in the form above directed.

*spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental reservation, or secret reservation whatsoever. And I do make this recognition, acknowledgment, renunciation and promise, heartily, willingly, and truly.*

*** For the authority of justices of peace to summon disaffected persons to take the oaths under the stat. 1 *Geo.* 1. *st.* 2. *c.* 13, see title Oaths.

### *III. How Tithes, Church Rates, and other Dues, may be recovered from Quakers.*

If quakers refuse to pay, justices, on stating what is due, may compel them thereto.

Where any quaker shall refuse to pay or compound for his great or small tithes, or pay any church rates, 'or any tithes, or 'rates, or other rights, dues, or payments, belonging to any 'church or chapel, which of right by law and custom ought to 'be paid for the stipend or maintenance of any minister or curate 'officiating therein, it shall be lawful for any two justices of peace 'of the same county, other than the patron of the church '(or chapel), or interested in the tithes, upon the complaint of 'any parson, vicar, curate, farmer or proprietor of tithes, or 'churchwarden, chapelwarden, or other person who ought to 'have, receive, or collect any such tithes, rights, dues or payments, to summon by reasonable warning such quaker, and 'after his appearance, or in default thereof, the said summons 'being proved upon oath, to proceed to hear and determine the 'complaint.' 7 & 8 *Will.* 3. *c.* 34. *s.* 4. 1 *Geo.* 1. *st.* 2. *c.* 6. *s.* 2.

If the sum doth not exceed 10*l.*

And they are to examine upon oath the justice of the complaint, and to ascertain what is payable by such quaker, and by order to appoint payment, so as the sum ordered do not exceed 10*l.* 7 & 8 *Will.* 3. *c.* 34. *s.* 4.

'And they are also to order such costs as they shall think reasonable, not exceeding 10s.' 1 *Geo.* 1. *st.* 2. *c.* 6. *s.* 2.

To be levied by distress.

And upon refusal to pay, it shall be lawful for any one of the said justices by warrant to levy the money by distress and sale of the goods of such offender, his executors or administrators, the necessary charges of distraining being thereout first deducted and allowed by the said justices. 7 & 8 *Will.* 3. *c.* 34. *s.* 4. 1 *Geo.* 1. *st.* 2. *c.* 6. *s.* 2.

'There is no time limited in these acts for keeping the distress, 'and the general act 27 *Geo.* 2. *c.* 20*, which empowers justices 'of peace to direct sale of the distress, in not less than four nor

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* See title Distress, div. viii.

'more than eight days, contains a clause* whereby it is express-
'ly provided that nothing therein shall extend to alter or repeal 'any provisions relating to distresses for the payment of tithes 'and church rates by quakers, contained in the acts 7 & 8 *Will.* '3. *c.* 34, and 1 *Geo.* 1. *st.* 2. *c.* 6. It seems therefore that the distress for such tithes and rates may be sold immediately.'

But any person aggrieved by the judgment of the two justices, may appeal to the next quarter sessions: and if the justices find cause to continue the judgment given by the two justices, they shall give costs against the appellant. 7 & 8 *Will.* 3. *c.* 34. *s.* 4. 1 *Geo.* 1. *st.* 2. *c.* 6. *s.* 2. Appeal.

And in the case of an appeal no warrant of distress shall be granted until after such appeal be determined. 7 & 8 *Will.* 3. *c.* 34. *s.* 5. 1 *Geo.* 1. *st.* 2. *c.* 6. *s.* 2.

'As the warrant of distress is not to be executed in case of an 'appeal, until the appeal is determined, it is advisable to sus- 'pend the issuing, or at least the execution thereof until after the 'next quarter sessions.'

And no proceedings by virtue of these acts shall be removed by certiorari or other writ, unless the title of such tithes shall be in question. 7 & 8 *Will.* 3. *c.* 34. *s.* 4. 1 *Geo.* 1. *st.* 2. *c.* 6. *s.* 2.

*Unless the title of such tithes shall be in question.*] In the construction hereof, it hath been adjudged, that if the party insist on any matter of law before the justices, which is any way doubtful, as on a custom in a parish to be discharged of a certain kind of tithe, the order may be removed within the intent of the statute. 2 *Hawk. c.* 27. *s.* 38.

It was also determined in the case of the *K.* v. *Wakefield and others, Hil.* 31 *Geo.* 2, that the acts mean that the title be *really* in question, and upon some *real foundation* of controversy: but that the mere scruple of any quakers to pay any demands of this nature, and a general allegation *that they controverted the title, and that it was really in question,* without any further particulars, or shewing at all *upon what foot* they controverted the payment†, is not a sufficient ground for removing the order; if it were, it would put a total end to these acts of parliament, and evade the very design and intention of making them: for the quakers might pre-

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* Viz. sec. 3.

† In this case it had been sworn, in the affidavits produced on the part of the quakers in general terms, *that the defendants controverted the title to the tithes before the justices,* and also *that the title to the tithes was then, and as the time of making the said affidavit, really in question.* In answer to which it was sworn by five old inhabitants that *the payments had been always paid by the landholders without any sort of scruple or objection, except lately by the quakers, that they believed them to be due, and* that the former owners of the very same lands, *which had been purchased by the quakers, did pay for them as other persons did in the same place.*

tend, that they are obliged in conscience to refuse or controvert the payment of these demands, and consequently, to question and deny the right to receive them; which is the *very thing* the acts mean to provide a summary remedy for. The intention was, that in *such case* the justices should make an order to compel them to pay; but that where the right and title are *really* in dispute and question between the parties, that the justices should have no jurisdiction to determine thereupon; and Lord *Mansfield* added a hint to be observed in future cases of this sort, viz. that upon all orders of this kind, the great and material point must be, *whether the title to the tithes was really in question or not*, and ought to be determined before the certiorari issues*. 1 *Burrow's Rep.* 488, 489.

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* And if the rule for the *certiorari* be made absolute, and the return thereto filed contrary hereto, the court will direct the certiorari to be superseded, the return to be taken off the file, and the order remanded. 4 *Burrow's Rep.* 488.

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I. Form of complaint against a quaker for not paying tithes.

Monmouthshire, to wit. } A B, *rector of the parish church of* —— *in the said county of* M, *maketh complaint unto* C D *and* E F, *esqrs, two of his majesty's justices of the peace in and for the said county, that* O O *of* ——, *in the parish aforesaid, in the county aforesaid, yeoman, being one of the people called quakers, hath refused to pay or compound for the tithes and other rights, dues, and payments, belonging to the said church, of right by law and custom due from him the said* O O *unto him the said* A B; *and thereupon he the said* A B *prayeth relief in the premises, and that such proceedings may therefore be had as the statute in that behalf provided doth direct.*

Exhibited before us the justices aforesaid, this — day of —. *C D. E. F.* } A. B.

II. Form of a summons thereon.

Monmouthshire, to wit. } To the constable of ————

*Whereas* A B, *rector of the parish church of* ——, *hath this day made complaint before us* C D *and* E F, *esqrs. two of his majesty's justices of the peace in and for the said county (neither of us the said justices being patron of the said church, nor interested in the tithes belonging thereto), that* O O *of* ——, *in the parish aforesaid, in the county aforesaid, yeoman, being one of the people called quakers, hath refused to pay or compound for*

*the tithes and other rights, dues, and payments belonging to the said church, of right by law and custom due from him the said* O O *unto him the said* A B; *these are therefore to require you forthwith to summon the said* O O *personally to be and appear before us the said justices, at the house known by the sign of the* ——, *in the town of* —— *in the said county, on* —— *the* —— *day of* ——, *at the hour of* —— *in the forenoon of the same day, to answer unto the said complaint; and be you then there to certify what you shall have done in the execution of this precept. Given under our hands and seals at* —— *aforesaid, in the county aforesaid, this* —— *day of* ——.

III. Form of the order on a quaker to pay his tithes.

Monmouthshire, to wit. } *WHEREAS* A B, *rector of the parish church of* A *in the said county of* M, *hath made complaint before us* C D *and* E F, *esqrs. two of his majesty's justices of the peace in and for the said county (neither of us the said justices being patron of the said church, nor interested in the tithes belonging thereto), that* O O *of* —— *in the said county, yeoman, being one of the people called quakers, hath refused to pay or compound for the tithes, and other rights, dues, and payments belonging to the said church, of right by law and custom due from him the said* O O *unto him the said* A B. *And whereas the said* O O, *having been duly summoned to appear before us the said justices, to answer unto the said complaint, hath in pursuance of our said summons appeared before us* * *at* ——, *in the county aforesaid, this* —— *day of* ——; *and we the said justices having proceeded to hear the said complaint, and having also duly examined the truth thereof upon oath, do find that there is justly due from the said* O O *unto the said* A B, *as rector of the church aforesaid, for and in respect of the tithes, and other rights, dues and payments belonging to the said church, the sum of ten pounds. we the said justices do therefore, in pursuance of the statute in that behalf made and provided, adjudge, order, and direct the said* O O *forthwith to pay, or cause to be paid, unto him the said* AB, *the said sum of* 10*l. together with the further sum of* 10*s. which*

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* If default is made, say, *And whereas it is proved before us, upon the oath of* C C, *constable of the said parish of* A, *that the said* O O *hath, in pursuance of our summons for that purpose issued, been duly summoned to appear before us the said justices, at* ——, *in the county aforesaid, this* —— *day of* ——, *in order to answer unto the said complaint; but he the said* O O *having neglected to appear before us, in pursuance of our said summons, we the said justices have proceeded to hear the said complaint, and have duly examined into the truth thereof upon oath, and we do find, &c.*

*we do hereby appoint to be paid by him the said* O O, *unto the said* A B, *for the costs and charges of him the said* A B *in this behalf sustained. Given under our hands and seals at* —— *aforesaid, in the county aforesaid, this* —— *day of* ——.

IV. Form of distress on non-payment of the foregoing order.

Monmouthshire, to wit. } To the constable of ——

*Whereas* O O *of* ——, *in the said county of* M, *yeoman, being one of the people called quakers, hath upon the complaint of* A B, *rector of the parish church of* —— *in the said county, being duly ordered by* C D *and* E F, *esqrs. two of his majesty's justices of the peace in and for the said county, neither of them the said justices being patron of the said church, nor any way interested in the tithes thereto belonging, to pay unto the said* A B *the sum of* 10*l. for the tithes and other rights, dues, and payments belonging to the said church of* ——, *of right by law and custom due from him the said* O O *unto him the said* A B *as rector of the same church as aforesaid; and also the further sum of* 10*s. for costs and charges, by him the said* A B *sustained in and about the recovering of the said tithes, rights, dues and payments, making in the whole the sum of ten pounds and ten shillings. And whereas the said* O O *hath had due notice of the said order, and the said sum of* 10*l.* 10*s. therein and thereby directed to be paid by him the said* O O *unto the said* A B *as aforesaid, hath been duly demanded of him the said* O O, *as appears unto me* C D, *esq. one of the justices aforesaid, by the oath of* —— ; *but he the said* O O *hath hitherto wholly refused, and still doth refuse to pay the same; these are therefore to authorise and command you the said constable, forthwith to levy the said sum of* 10*l. and* 10*s. by distress and sale of the goods and chattels of him the said* O O, *and out of the money arising from such sale you are to pay or cause to be paid unto the said* A B *the said sum of* 10*l. and* 10*s., rendering unto him the said* O O *the overplus (if any), your necessary charges of distraining being thereout first deducted. Given under my hand and seal at* —— *in the said county, this* —— *day of* ——.

*Quarantine.* See PLAGUE.

*Races.* See HORSE RACES.

*Rape.* See FELONY.

*Receipts.* See STAMPS.

*Receivers of stolen Goods.* See ACCESSARIES, and FELONY.

# RECOGNIZANCE.

A RECOGNIZANCE is an obligation of record, which a man enters into before some court of record or magistrate duly authorised, with condition to do some particular act; as to appear at the assizes, to keep the peace, to pay a debt, or the like. 2 *Black. Com.* 341. What it is.

But it is a rule of law, that no one can take any recognizance, who is not either a justice of record, or by commission. 2 *Hawk.* c. 8. s. 1. By whom to be taken.

And these recognizances, in some cases, the justices of peace are enabled to take, by the express words of certain statutes: but in other cases (as for the peace and good behaviour, and the like) it is rather in congruity, than by any express authority given them, either by their commission or by statute. *Dalton*, c. 168. s. 1.

And wheresoever any statute giveth them power to take a bond of any man, or to bind over any man to appear at the assizes or sessions, or to take sureties for any matter or cause, they may take a recognizance. *Ibid.*

Also wheresoever they have authority given them, to cause a man to do a thing, there it seemeth they have (in congruity) power given them to bind the party by recognizance to do it; and if the party shall refuse to be bound, that then the justice may send him to gaol. *Dalton*, c. 168, s. 1. 11 *Co. Rep.* 52.

But a justice of peace can take no recognizance, but only for such matters as concern his office. *Dalton*, c. 168, s. 3.

And if a justice of peace shall take a recognizance where he hath no authority, it seemeth void. *Ibid.*

Every recognizance taken by justices of peace must be made to *our lord the king*, upon pain of imprisonment of any person that shall take it otherwise. 33 *Hen.* 8. c. 39. The form of it.

And the place of abode and the trade or calling, both of the principal and sureties, are to be punctually set down. 2 *Shaw's Justice*, 100.

And the principal is to be bound in double the sum which the sureties are bound in. *Ibid.* In what sum.

But the sum wherein they shall be bound is left to the discretion of the justice; except the recognizance be taken upon a writ of *supplicavit**, or in pursuance of a particular statute, and

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* The writ of *supplicavit* is a mandatory writ which issues out of the court of *King's Bench* or *Chancery* (when a justice is averse to act), to compel him to take sureties of the peace, as a ministerial, and not as

then it must be done as the writ or statute prescribes; yet if no sum be expressed therein, the justice as to such matter is left to his liberty. 2 *Shaw's Justice*, 102.

The manner of taking it.

A recognizance ought to be written or engrossed upon parchment; yet if it be on paper, it will be good in law. 2 *Shaw's Justice*, 101.

And when it is entered or made up* the condition must be read to the parties bound, calling them by their names thus:

'You A B acknowledge to owe to our sovereign lord the king '40l.; and you C D and E F (the pledges) and each of you 'acknowledge to owe to our sovereign lord the king the 'sum of 20l. to be levied upon your several goods and chattels, 'lands and tenements, by way of recognizance to his majesty's 'use, upon condition, that if you A B shall be and appear at 'the next session of the peace, &c. [*or as the condition is*] then 'this recognizance to be void, or else remain in full force—are 'you content? to which the parties severally make answer, Yes, 'or We are contented.' 2 *Shaw's Jus.* 100. *Dogh. Cr. Cir. Com.* 41.

To which recognizance the justice is to subscribe his name; but the persons bound need not set their names to it. 2 *Shaw's Justice*, 100.

For it is witnessed only by the record, and not by the party's seal. 2 *Black. Com.* 341.

And a recognizance taken by a justice of peace is a matter of record, so soon as it is taken, and acknowledged, although it be not made up, but only entered in his books. *Dalton*, c. 168, § 3.

To be certified.

And every justice that shall take any recognizance for the keeping of the peace, shall certify the same to the next sessions, that the party bound may be called; and if he make default, the same default shall be recorded, and the recognizance, with the record of the default, be sent and certified into the *Chancery*, *King's Bench*, or *Exchequer*. 3 *Hen.* 7. c. 1.

But the recognizances in cases of felony are to be certified to the general gaol delivery, by 1 & 2 *Phil. & Mar.* c. 13.†

Breach of recognizance.

And if the condition of such recognizance be broken or not complied with, it becomes forfeited and absolute, and being *estreated* or extracted (that is, taken out from among the other

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a judicial officer; to which writ he must make a return, specifying his compliance, under his hand and seal; but this writ is seldom used; for when application is made to the superior courts, they usually take the recognizance there. 4 *Black. Com.* 253.

* For the particular form of a recognizance when drawn up, see the end of this title.

† See this act under title BAIL.

records) and sent up to the *Exchequer*, the party and his sureties having now become the king's absolute debtors, are sued for the several sums in which they are respectively bound*. 4 *Black. Com.* 253.

And if the party do not personally appear on the day on which he is bound to appear, the court will not discharge the recognizance, *although the attorney-general consents to it*, but they will respite it till the next term. 11 *Mod. Rep.* 200. Discharged how.

Also if persons be bound by recognizance, that *J S* shall appear in the *King's Bench* the first day of such a term to answer to such an information against him, and not depart till he shall be discharged by the court, and afterwards the attorney general enter a *noli prosequi* as to that information, and exhibit another, on which the defendant is convicted, and refuses to appear in court after personal notice, the recognizance is forfeited; for being express that the party shall not depart till he be discharged by the court, it cannot be satisfied unless he be forthcoming and ready to answer to any other information exhibited against him while he continues not discharged, as much as to that which he was particularly bound to answer to; but in such case it seems, that the recognizance shall not be forfeited by the party's not appearing in court the first day of every term, after he hath pleaded to the information, as it may be before he hath pleaded. 2 *Hawk. c.* 15. *s.* 84.

For neither the defendant nor his bail can be called upon their recognizance without notice, except on the day on which the defendant is bound to appear. *Cases B. R. Temp. Hard.* 237.

But notwithstanding recognizances are forfeited and estreated where the parties bound do neglect to perform the conditions, yet the court of *Exchequer* (where there appears no obstinate or wilful neglect) will grant orders for *quietus. Dogh. Cr. Cir. Com.* 67.

*And for the more easy discharge of recognizances, estreated into the* Exchequer, IT IS ENACTED by 4 *Geo.* 3. *c.* 10. as follows: 'Whereas many recognizances have been estreated into the *exchequer*, against persons not appearing as parties or witnesses in 'the courts at *Westminster*, or at the assizes and general quarter 'sessions, or other courts of record, or for not prosecuting indictments there, or otherwise not performing the conditions in 'such recognizances contained; many of which neglects of duty 'have happened by the inattention of ignorant people, some of 'whom are imprisoned, and a great number of others liable to be 'so, by the process constantly issued out against them out of the '*Exchequer*, and directed to the sheriffs, though no other prosecution be subsisting but merely for such forfeitures of their 'recognizances, from which there are no easy means at present, for poor persons especially, to procure any discharge: 'Therefore for remedy thereof, it shall be lawful for the barons

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* For this see title ESTREAT.

'of the *Exchequer*, upon affidavit and petition presented to them 'by or on the behalf of the person imprisoned, or liable to 'be imprisoned, on the forfeiture of any such recognizances, to 'discharge such person, by order from the said barons, without 'any *quietus* to be sued out for that purpose; for which order 'no more than one pound and one shilling shall be taken by the 'officer appointed to give out the same *: provided that no dis-'charge shall be given on such petitions where any debt is due to 'the crown, other than by the recognizances so prayed to be dis-'charged; nor in any cases of defrauding the revenue by contra-'band trade, or assaulting the officers of the customs or excise in 'the execution of their duty, or any persons lawfully assisting 'them therein.'

Form of a recognizance with sureties.

Monmouthshire, to wit. } *BE it remembered, that on the*—— *day of*—— *in the* —— *year of the reign of our sovereign lord* George *the third, by the grace of God, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, and so forth,* O O *of* ——, *in the said county of* ——, *mason, and* T S *of* ——, *in the said county, tyler, and* S S, *of* ——, *in the said county, yeoman, personally came before me,* J P, *esq. one of the justices of our same lord the king, assigned to keep the peace in and for the said county, and severally acknowledged themselves to owe to our said lord the king; that is to say, the said* O O *the sum of* 20*l. and the said* T S *and* S S *each the sum of* 10*l. separately, of good and lawful money of* Great Britain, *to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lord the king, his heirs and successors, if the said* O O *shall make default in the condition hereunder written* [or *hereon indorsed,* as the case is †]

*Acknowledged the day and year above written before me* J. P.

*The condition of the above* [or *within written*] *recognizance is such, that if the above bound* O O *do and shall* ———— *then the said recognizance to be void, or otherwise remain in full force.*

Form of a recognizance without sureties.

Monmouthshire, to wit. } *BE it remembered, that on the* —— *day of* —— *in the* —— *year of the reign of our sovereign lord* George *the third, by the grace of God, of the united*

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* Notwithstanding the good intent of this act, the obtaining the discharge of a forfeited recognizance is still very expensive.

† The condition of the recognizance may be wrote either on the back or at the foot thereof, but the latter seems best.

*kingdom of* Great Britain *and* Ireland, *king, defender of the faith, and so forth,* O O *of* ——, *in the said county of* ——, *labourer, personally came before me* J P, *esq. one of the justices of our said lord the king, assigned to keep the peace in and for the said county, and acknowledged himself to owe to our said lord the king* 10*l. of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said* O O *shall make default in the condition hereunder written* [or *hereon indorsed.*]

*Acknowledged the day and year above written before me,* J P.

*The condition, &c. is such, &c.*

Note, Forms of different conditions are inserted under the titles to which they relate.

Record of the discharge of a recognizance at a general quarter sessions, by proclamation.

*BE it remembered, that at the general quarter session of the peace of our sovereign lord the king, holden at* ——, *in and for the county of* M, *on* Wednesday, *the* —— *day of* —— *in the* —— *year of the reign of our sovereign lord* George *the third, now king of the united kingdom of* Great Britain *and* Ireland, *defender of the faith and so forth, before* ——, *esqrs. and others their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the county of* M *aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county,* J P, *esq. then one of the justices of our said lord the king, assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdeeds, committed in the same county, doth certify and deliver here in court a certain recognizance taken before him the* —— *day of* —— *of record, to be determined in form of law; the tenor of which said recognizance is as followeth:* O O *of* ——, *mason, doth acknowledge to owe to our sovereign lord the king the sum of* 20*l. and* T S *and* S S, ——, *of the same place, yeomen, severally acknowledge to owe to our said sovereign lord the king the sum of* 10*l. on condition that if the said* O O *do and shall personally appear at the next general quarter session of the peace, to be holden at* —— *for the said county, to answer to all such matters of misdemeanor as on his majesty's behalf shall be then and there objected against him by* A B, *for cheating and defrauding him of* —— *of the value of* ——, *or thereabouts, under false colours and pretences, and not depart the court without licence, then this recognizance to*

*be void, or otherwise remain in full force; and afterwards, to wit at the same general quarter session of the peace of our said lord the king, holden for the county aforesaid, at ——, in the county aforesaid, on the said* Wednesday, *the* —— *day of* —— *in the year aforesaid, before the aforesaid justices of our said lord the king, and others their fellows aforesaid, being the next general quarter session of the peace, holden for the county aforesaid, after the said* —— *day of* ————, *the aforesaid* O O *cometh in his own proper person, and thereupon public proclamation is made; that if any one would inform the said justices here against the said* O O *he might come forth and be heard; and because the aforesaid justices and court here do find nothing ill of him the said* O O, *it is considered by the court here, that the said* O O *be discharged of his recognizance aforesaid, and that he go thereof without day.*

*Recusants.* See DISSENTERS, PAPISTS, QUAKERS.

*Register, Duty on.* See STAMPS.

*Regrating.* See FORESTALLING.

*Removal of the Poor.* See SETTLEMENTS AND REMOVALS.

*Rent.* See DISTRESS.

*Replevin.* See DISTRESS.

*Rescue.* See ESCAPES, FELONY.

*Restitution of stolen Goods.* See FELONY.

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# RIOTS, ROUTS, AND UNLAWFUL ASSEMBLIES.

Riot.

A RIOT seems to be a tumultuous disturbance of the peace, by three persons, or more*, assembling together of their own authority, with an intent mutually to assist one another, against

* Therefore on an indictment for a riot against three or more, if a verdict acquit *all but two*, and find them guilty, it is repugnant and void, unless the indictment charge them with having made such riot *together with divers other persons unknown*: for otherwise it appears

any one who shall oppose them, in the execution of some enterprise of *a private nature*, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful. 1 *Hawk. c.* 65. *s.* 1.

A Rout seems to be, according to the general opinion, a disturbance of the peace, by persons assembling together with an intention to do a thing, which if it be executed will make them rioters, and actually making a motion towards the execution thereof. 1 *Hawk. c.* 65. *s.* 8. Rout.

But by some books the notion of a rout is confined to such assemblies only, as are occasioned by some grievance common to all the company, as the inclosure of land in which they all claim a right of common, or the like. However, inasmuch as it generally agrees with a riot as to all the rest of the abovementioned particulars, requisite to constitute a riot, except only in this, that it may be a complete offence without the execution of the intended enterprize, it seems not to require any further explication. 1 *Hawk. c.* 65. *s.* 8.

An unlawful Assembly, according to the common opinion, is a disturbance of the peace, by persons barely assembling together with an intention to do a thing, which if it were executed would make them rioters, but neither actually executing it, nor making a motion towards the execution of it. 1 *Hawk. c.* 65. *s.* 9. Unlawful assembly.

But this seems to be much too narrow a definition. For *any meeting whatsoever* of great numbers of people, with such circumstances of terror *as cannot but endanger the public peace, and raise fears and jealousies among the king's subjects**, seems properly

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that the defendants are found guilty of an offence whereof it is impossible that they should be guilty, for there can be no riot where there are no more than two persons. 2 *Hawk. c.* 47. *s.* 8.

So where six were indicted for a riot, and two of them died before trial; two were acquitted and two only found guilty, yet judgment was given upon this verdict; for by Lord *Mansfield* they must have been found guilty with one or both of those who had not been tried, or it could not have been a riot. 3 *Burrow's Rep.* 1262.

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* 'The 13 *Car.* 2. *stat.* 1. *s.* 5, recites that tumultuous and 'disorderly selecting and procuring of hands by private persons to 'petitions, complaints, remonstrances, and declarations, and other 'addresses to the king, or to both, or either houses of parliament 'for alteration of matter established by law, redress of pretended 'grievances in church or state, or other public concernments, had 'been made use of to serve the ends of FACTIOUS AND SEDITIOUS 'PERSONS gotten into power, to the violation of the public peace

to be called an unlawful assembly; as where great numbers complaining of a common grievance meet together, armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests, for no one can foresee what may be the event of such an assembly. 1 *Hawk. c. 65. s. 9.*

Also an assembly of a man's friends for the defence of his person, against those who threaten to beat him, if he go to such a market, or the like, is unlawful; for he ought to demand surety of the peace, and not make use of such violent methods, which cannot but be attended with the danger of raising tumults and

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'and had been a great means of the late unhappy wars, confusions 'and calamities, in this nation.'

To prevent the like mischiefs for the future IT IS THEREFORE ENACTED by the same statute, that 'no person shall solicit or 'procure the getting of hands, or other consent, of any persons 'above the number of 20, to any petition, complaint, remon-'strance, declaration, or other address to the king, or both or 'either houses of parliament, for alteration of matters established 'by law in church or state; unless the matter thereof be 'first consented to and ordered by three justices of the county, or 'by the major part of the grand jury, where the same shall arise, 'at their assizes or quarter sessions; or if arising in *London*, 'by the lord mayor, aldermen, and commons, in common coun-'cil.'

And no person shall repair to his majesty, or both or either houses of parliament, upon pretence of delivering any petition, &c. accompanied with excessive number of people, nor at any one time with above the number of ten persons; upon pain of incurring not exceeding 100l. and three months imprisonment, to be prosecuted at the *King's Bench*, or the assizes or quarter sessions within six months after the offence, and proved by two witnesses. *s. 2.*

But this act shall not hinder any persons not exceeding ten, to present any complaint to any members of parliament after election and during the parliament, or to the king's majesty, for any remedy to be then had; nor extend to any address to his majesty by all or any of the members of both or either houses of parliament. *s. 3.*

Note. By 1 *Will. & Mar. st. 2. c. 2. s.* 1, article 5, usually styled the Bill of Rights, it is enacted, "that it is the right of the "subjects to petition the king, and that all commitments and pro-"secutions for such petitioning, are illegal;" and on the trial of Lord *George Gordon* it was contended that this aricle had virtually repealed the above statute of *Car.* 2; but Lord *Mansfield* declared it was the unanimous opinion of the court, that neither that, nor any other act of parliament had repealed it, and that it was in full force. 2 *Doug. Rep.* 592, 593.

disorders to the disturbance of the public peace: yet an assembly of a man's friends *in his own house*, for the defence of the possession thereof against those who threaten to make an unlawful entry thereinto, or for the defence of his person against those who threaten to beat him therein, is indulged by law; for a man's house is looked upon as his castle. 1 *Hawk. c.* 65. *s.* 10.

Having premised so far, it will be proper to consider

*I. What assembly will be deemed riotous.*

*II. How offences of this nature may be suppressed and punished by the common law.*

*III. How by statute.*

## *I. What assembly will be deemed riotous.*

How far an assembly may become riotous from want of legal authority, or be excusable by having such authority.

Wherever *three or more persons* use force and violence, in the execution of any design whatever, wherein the law does not allow the use of such force, all who are concerned therein are rioters. 1 *Hawk. c.* 65. *s.* 2.

But in some cases wherein the law authorises force, it is not only lawful, but also commendable to make use of it; as for a sheriff or constable, or perhaps even for a private person, to assemble a competent number of people, in order with force to suppress rebels, or enemies, or rioters, and afterwards with such force actually to suppress them; or for a justice of peace, who has a just cause to fear a violent resistance, to raise the *posse*, in order to remove a force in making an entry into, or detaining of lands. *Ibid.*

Also it seems to be the duty of a sheriff, or other minister of justice, having the execution of the king's writs, and being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance; yet it is said not to be lawful for them to raise a force for the execution of a civil process, unless they find a resistance; and it is certain, that they are highly punishable for using any needless outrage or violence therein. *Ibid.*

How far the intention with which such persons assemble together must be unlawful.

And it seems agreed, that if a number of persons being met together at a fair or market, or church ale, or any other lawful or innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of sudden affray only, of which none are guilty but those who actually engage in it, because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened

unexpectedly without any previous intention concerning it. 1 *Hawk. c.* 65. *s.* 3.

Yet it is said, that if persons innocently assembled together, do afterwards upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot, because, upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design. *Ibid.*

However, it seems clear, that if in an assembly of persons met together on any lawful occasion whatsoever, a sudden proposal should be started of going together in a body to pull down a house or inclosure, or to do any other act of violence to the disturbance of the public peace, and such motion be agreed to, and executed accordingly, the persons concerned cannot but be the rioters, because their associating themselves together for such a new purpose, is no way extenuated by their having met at first upon another. *Ibid.*

Also it seems to be certain, that if a person seeing others actually engaged in a riot, do join himself unto them, and assist them therein, he is as much a rioter as if he had at first assembled with them for the same purpose, inasmuch as he has no pretence that he came innocently into the company, but appears to have joined himself unto them, with an intention to second them in the execution of their unlawful enterprize; and it would be endless as well as superfluous, to examine whether every particular person engaged in a riot, were in truth one of the first assembly, or actually had a previous knowledge of the design thereof. *Ibid.*

With what kind of violence or terror the enterprize must be executed.

It hath been holden that the enterprize ought to be accompanied with some offer of violence, either to the person of a man, or to his possessions, as by beating him, or forcing him to quit the possession of his lands or goods, or the like; and from hence it seems to follow, that persons riding together on the road with unusual weapons, or otherwise assembling together in such a manner as is apt to raise a terror in the people, without any offer of violence to any one in respect either of his person or possessions, are not properly guilty of a riot, but only of an unlawful assembly. 1 *Hawk.* c. 65. *s.* 4.

However, it seems clearly to be agreed that in every riot there must be some circumstances either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people, as the shew of armour, threatening speeches, or turbulent gestures. 1 *Hawk. c.* 65. *s.* 5.

For an assembly may meet together with such circumstances of terror as to be a riot. 2 *Salk.* 594, 595. *pl.* 4.

And every such offence must be laid to be done *to the terror of the people.* 1 Hawk. c. 65. s. 5.

From whence it clearly follows, that assemblies at wakes or other festival times, or meeting for exercise of common sports or diversions, as bull-baiting, wrestling, and such like, are not riotous. *Ibid.*

And from the same ground also it seems to follow, that it is possible for three or more persons to assemble together, with an intention to execute a wrongful act, and also actually to perform their intended enterprise, without being rioters; as if a competent number of people assemble together, in order to carry off a piece of timber to which one of the company hath a pretended right, and afterwards do carry it away without any threatening words, or other circumstances of terror. *Ibid.*

Also persons assembled together in a peaceful manner to do a thing prohibited by statute, as to celebrate mass or the like, and afterwards peacefully performing the thing intended, cannot be said to be rioters; for there seems to be no reason why an assembly should become riotous barely for doing a thing contrary to statute, any more than for doing a thing contrary to common law. *Ibid.*

*How far the grievances intended to be redressed must be of a private nature.*

It seems agreed, that the injury or grievance complained of and intended to be revenged or remedied by such an assembly, must relate to some private quarrel only; as the inclosing of lands, in which the inhabitants of a town claim a right of common, or gaining the possession of tenements, the title whereof is in dispute, or such like matters relating to the interests or disputes of particular persons, no way concerning the public. 1 *Hawk. c.* 65. *s.* 6.

For wherever the intention of such an assembly is to redress public grievances, as to pull down all inclosures in general, or to reform religion, or to remove evil counsellors from the king, or the like, if they attempt with force to execute such their intentions, they are in the eye of the law guilty of levying war against the king, and consequently of high treason *. *Ibid.*

*How far the execution of an act in its own nature lawful, may make an assembly riotous.*

It is no way material whether the act intended to be done by such an assembly, be of itself lawful, or unlawful; therefore if three or more persons assist a man to make forcible entry into lands, to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nuisance, *which may lawfully be done in a peaceful manner* †, they are as properly rioters as if the act intended to be done by them were never so unlawful, for the law will not suffer persons to seek redress of their private grievances by such dangerous disturbances of the public peace. However, the

* As is particularly shewn under the title Treason.

† See title Nuisance.

justice of the quarrel in which such an assembly doth engage, is certainly a great mitigation of the offence. 1 *Hawk.* c. 65. s. 7.

## *II. How offences of this nature may be suppressed and punished by the common law.*

By sheriffs, constables, and other officers.

It seems clear, that every sheriff, under sheriff, and also every other peace officer, as constables and like officers, may, and ought to do all that in them lies towards the suppressing of a riot, and may command all other persons whatsoever to assist them therein. 1 *Hawk.* c. 65. s. 11.

By private persons.

Also it is certain, that any private person may lawfully endeavour to appease all such disturbances by staying those whom he shall see engaged therein from executing their purpose, and also by stopping others whom he shall see coming to join them; for if private persons may do thus much, as it is most certain that they may, towards the suppressing a common affray, much more may they do it towards the suppressing of a riot. *Ibid.*

Also it hath been holden, that private persons may arm themselves in order to suppress a riot; from whence it seems clearly to follow, that they may also make use of arms in the suppressing of it, if there be a necessity for their so doing. *Ibid.*

But *Hawkins* observes, that it seems to be extremely hazardous for private persons to proceed to those extremities; and that it seems no way safe for them to go so far in common cases, lest under the pretence of keeping the peace, they cause a more enormous breach of it; and therefore such violent methods seem only proper against such riots as savour of rebellion, for the suppressing whereof no remedies can be too sharp or severe. *Ibid.*

And it is enacted by 1 *Geo.* 1. c. 5, that 'if more persons 'than twelve, being unlawfully, riotously and tumultuously as-'sembled, twelve or more of them shall continue together, and 'not disperse themselves within an hour after proclamation 'made in pursuance of that statute, that then every peace officer 'and all persons who shall be commanded to be assisting to 'such officer, may and ought to apprehend all such rioters, and 'carry them before some justice of peace, and that if any 'such rioters shall happen to be killed, maimed, or hurt, by 'reason of their resisting such officer or persons, such officer and 'persons shall be indemnified.' s. 3.

But this statute being wholly in affirmance of the common law, does not take away any part of the authority in the suppressing of a riot, which was before that time given either to officers or private persons by the common law or by statute. 1 *Hawk.* c. 65. s. 1

And in general, offences of this kind, which are not of a very enormous nature are proceeded against at the common law (I) only, and punished as trespasses by fine and imprisonment only; yet sometimes, where they have been very enormous, they have been punished with the pillory. 1 *Hawk. c.* 65. *s.* 11.

How punished at common law.

And if a mayor and commonalty of a town do assemble and make a riot in their common quarrel, this offence shall be adjudged and punished in their natural persons, and not in their body politic. *Lamb, Eiren.* 170. *c.* 5.

For the corporation itself cannot be in fault, because it is invisible, and exists only in supposition of law. 1 *Hawk. c.* 65. *s.* 13.

Yet there are some precedents by which it appears, that corporations have been amerced, and their liberties seised into the king's hands, for suffering a dangerous riot to happen within their

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(I) An indictment at common law for a riot and assault. *Cr. Cir. Com.*

Surry. } *THE jurors for our lord the king upon their oath present, that* F C, *late of the parish of* Croydon, *in the county of* Surry, *yeoman ;* T H, *late of the same place, yeoman ;* A H, *late of the same place, yeoman; and divers other persons (to the jurors aforesaid as yet unknown), on the —— day of —— in the —— year of our sovereign lord* George *the third, now king of the united kingdom of* Great Britain *and* Ireland, *defender of the faith, &c. with force and arms, at the parish aforesaid, in the county aforesaid, did unlawfully, riotously, and routously assemble and gather together, to disturb the peace of our said lord the king; and so being then and there assembled and gathered together, in and upon one* S, *the wife of* W H, *in the peace of God and our said lord the king then and there being, unlawfully, riotously, and routously did make an assault, and her the said* S *then and there unlawfully, riotously, and routously did beat, wound, and ill-treat, so that her life was greatly despaired of, and other wrongs to the said* S *then and there unlawfully, riotously, and routously did, to the great damage of the said* S *and against the peace of our said lord the king, his crown and dignity: And the jurors aforesaid, upon their oath aforesaid, do further present, that the said* F C, T H, *and* A H, *on the said fifteenth day of* June, *in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said* S H, *in the peace of God and our said lord the king then and there being, did make an assault, and her the said* S *then and there did beat, wound, and ill-treat, so that her life was greatly despaired of, and other wrongs to the said* S *then and there did, to the great damage of the said* S, *and against the peace of our said lord the king, his crown and dignity.*

jurisdiction without using their endeavours to suppress it. 1 *Hawk. c.* 65. *s.* 13.

Also women are punishable as rioters, but infants under the age of discretion are not. 1 *Hawk. c.* 65. *s.* 14. *Lamb, Eiren.* 169. *c.* 5.

### *III. How offences of this nature may be suppressed and punished by statute.*

How by one justice.

By 34 *Ed.* 3. c. 1, 'justices of peace shall have power 'to restrain offenders, rioters, and barretors, and to pursue, 'arrest, take, and chastise them according to their trespass and 'offence, and cause them to be imprisoned and duly punished.'

And *Hawkins* says, this statute has been liberally construed for the advancement of justice; for it hath been resolved, that if a justice of peace find persons riotously assembled, he alone without staying for his companions hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail, but that he may also authorise others to arrest them by a bare parol command without other warrant, and that by force thereof the persons so commanded may pursue and arrest the offenders in his absence as well as presence. 1 *Hawk. c.* 65. *s.* 16.

It is also said, that if a justice of peace be sick, and hear that persons are riotously assembled, he may send his servants to arrest them and bring them before him; and that if he hear that persons are riotously together in a certain place, and go thither and find none there, he may leave his servants behind him with a command to arrest them when they shall come. *Ibid.*

Also it is said, that after a riot is over, any one justice of peace may send his warrant to arrest any person who was concerned in it, and also that he may send him to gaol, till he shall find sureties for his good behaviour. *Ibid.*

But it seems to be agreed, that no one justice of the peace hath any power by force of this statute, either to record a riot upon his own view, or to take an inquisition thereof after it is over. 1 *Hawk. c.* 65. *s.* 17.

Also if one justice of peace proceeding upon this statute, shall arrest an innocent person as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing of himself, because no single justice of peace is by this statute made a judge of the said offence. *Ibid.*

But if a riot shall be committed by persons armed in an unusual manner, contrary to the stat. of *Northampton**, 2 *Ed.* 3.

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* See title Affrays.

*c.* 3; and any one justice of peace acting *ex officio*, in pursuance of the said statute seize the armour and imprison the offender, and make a record of the whole matter, such a record cannot be traversed, because it is made by one acting in a judicial capacity. *Ibid.*

And for the same reason, if a justice of peace proceeding on stat. 15 *Ric.* 2, against forcible entries and detainers *, shall upon his own view record a riot, which shall be committed in the making of any such forcible entry or detainer, a riot so recorded cannot be traversed. *Ibid.*

Also if a justice of peace acting as a judge, by virtue of any statute whatsoever empowering him so to do, make a record upon his own view of a riot committed in his presence, such record shall not be traversed. *Ibid.*

For the law gives such an uncontroulable credit to all matters of record, made by any judge of record as such, that it will never admit of an averment against the truth therof. *Ibid.*

And by 17 *Ric.* 2. c. 8, 'as soon as the sheriff, and other the 'king's ministers,' (*under which words all justices of peace seem clearly to be included*) 'shall hear of a riot, rout, or other assem-'bly against the peace, they, with the power of the county where 'such case shall happen, shall disturb such malice with all their 'power, and shall apprehend all such offenders, and put them 'in prison until due execution of the law be made of them; and 'the lords and other liege people of the realm shall attend, with 'their whole strength and power, the sheriffs and ministers 'aforesaid.'

How by two or more justices.

Also by 13 *Hen.* 4. *c.* 7, 'if any riot, assembly, or rout of 'people, against law, be made, the justices of peace, three, or 'two of them at the least, and the sheriff, shall come with the 'power of the county, if need be, and arrest them; and the 'same justices and sheriff shall have power to record (II) that

* See title Forcible Entry and Detainer.

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(II) Record of a riot on view.

Monmouthshire, to wit. } *BE it remembered, that on the —— day of ——, in the —— year of the reign of ——, we J P and S J, esqrs, two of the justices of our said sovereign lord the king, assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, and S S, esq. sheriff of the said county, at the complaint and request of T J of ——, in the county aforesaid, yeoman, in our proper persons have come to the mansion-house of him the said T J, in ——*

'which they find so done in their presence against law: and by
" the record such offenders shall be convict in manner as in the
' statute of forcible entry (III).'

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*aforesaid, and then and there do find and see F R of ——, tyler; S R of the same place, mason; and T R of the same place also, labourer; together with divers other malefactors and disturbers of the peace of our said lord the king to us unknown, to the number of ——— persons and upwards, in a warlike manner arrayed,* to wit, *with clubs, swords and guns, unlawfully, riotously, and routously assembled, and the same house besetting, many evils against him the said T J threatening, to the like disturbance of the peace of our said lord the king, and terror of his people, and against the form of the statute in that case made and provided; and therefore we the aforesaid J P, S J and S S, the aforesaid F R, S R, and T R, do then and there cause to be arrested, and to the next gaol of our said lord the king, in the county aforesaid, to be conveyed, by our view and record of the unlawful assembly, riot, and rout aforesaid convicted, there to remain each and every of them respectively, until they shall severally and respectively have paid to our said lord the king, the several sum of ten pounds each, which we do set and impose upon them, and each and every of them separately for the said offence. In witness whereof, we the justices and sheriff aforesaid to this our present record our hands and seals do set at —— aforesaid, in the county of M aforesaid, on the said —— day of ——, in the said —— year of the reign of our said sovereign lord the king.*

### (III) Form of a commitment of rioters upon view.

Monmouthshire. } *J P and S J, esqrs, two of the justices of our sovereign lord the king that now is, assigned to keep the peace of our said sovereign lord the king in and for the said county of M, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and S S, esq. sheriff of the said county, to the keeper of his majesty's gaol, at ——— in the said county, and to his deputy and deputies there, and to every of them, greeting: Whereas upon complaint this day made unto us by P G of ——— in the said county, yeoman, we the said justices and sheriff did immediately go to the dwelling-house of the said P G, at —— aforesaid, in the county aforesaid, and there found upon our own view, F R late of ———, labourer; S R, late of the same place, labourer; and T R, late of ——, tyler; together with divers other malefactors and disturbers of the peace of our said lord the king to us unknown to the number of —— persons and upwards, in a*

In the construction of this statute, it hath been holden, that all persons whatsoever, and even noblemen, and all others of what condition or degree soever they may be, except women, clergymen, persons decrepid, and infants under the age of fifteen years, are bound under pain of fine and imprisonment, upon reasonable warning, to attend the justices and sheriffs in the execution of the said statute, and not only to arrest the rioters, but also to conduct them to prison. 1 *Hawk.* c. 65. s. 20.

Also it hath been holden, that those who attend the justices in order to suppress a riot, may take with them such weapons as shall be necessary to enable them effectually to do it, and that they may justify the beating, wounding, and even the killing of such rioters as shall resist or refuse to surrender themselves. 1 *Hawk.* c. 65. s. 21.

And it is said, that the justices of peace are not only empowered by the said statute, to raise the power of the county to assist them in suppressing a riot which shall happen within their own view or hearing, but also that they may safely do it upon a credible information given them of a notorious riot happening at a distance, whether there were any such riot in truth or not; for it may be dangerous for them to stay till they get other information of the fact; but they seem to be punishable for alarming the county in this manner, without some probable ground of their proceeding as would induce a reasonable man to think it necessary and convenient. 1 *Hawk.* c. 65. s. 22.

And it seems clear from the said statute, that if the justices, in going towards the place where they have heard that there is a

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*warlike manner arrayed, to wit, with clubs, swords, and guns, unlawfully, riotously, and routously assembled, and the same house besetting many evils against him the said P G threatening, to the like disturbance of the peace of our said lord the king, and against the form of the statute in such case made and provided: We do therefore send you by ——, the bodies of the said F R, S R, and T R, convicted of the said riot, rout, and unlawful assembly, by our own view, testimony, and record; commanding you in his said majesty's name to receive them into your said gaol, and there safely to keep them, and each and every of them respectively, until they shall have respectively paid the several sum of* 10l. *of good and lawful money of* Great Britain, *to our said sovereign lord the king, which we have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail not, on the pain that will thereon ensue. Given at —— aforesaid, in the county aforesaid, under our hands and seals, the —— day of —— in the —— year of the reign of our said sovereign lord king* George *the third.*

riot, shall meet persons coming from thence riotously arrayed, they may arrest them for being assembled together in such an unlawful manner, and also make a record thereof, for the statute extends to all other unlawful assemblies whatsoever, as well as to riots. 1 *Hawk. c.* 65. *s.* 23.

Also it seems clear, that after the justices have had a view of a riot, they may make a record thereof, whether the offenders be in custody at the same time, or have escaped. 1 *Hawk. c.* 65. *s.* 24.

And it is said that the justices may lawfully, upon a fresh pursuit, arrest such of the offenders as shall have escaped, but that they cannot at another time award any process on such a record, and therefore that they ought to send it into the *King's Bench*, if any of the offenders escape from a fresh pursuit, and that process shall issue against them from thence. *Ibid.*

However, there seems to be no doubt, but that any of the same justices who have recorded a riot, or any other justice of peace, may at any time by virtue of the above mentioned stat. of 34 *Ed.* 3. c. 1. arrest those who have been notoriously guilty of a riot, in order to compel them to find sureties for their good behaviour. *Ibid.*

And it seemeth to be certain, that the record of a riot expressly mentioned to have happened within the view of the justices by whom it is recorded, is a conviction of so great an authority, that it can no way be traversed, however little ground in truth there might be to affirm that any riot at all was committed, or however innocent the parties may be of the fact recorded against them. 1 *Hawk. c.* 65. *s.* 25.

And it is said, that if any one be bound by recognizance to keep the peace, and on a *scire facias* thereon, such a record of a riot be produced against him, he shall not only be concluded thereby from pleading the general issue, but also from pleading any matter of justification whatsoever. *Ibid.*

However, it seemeth clear, that if in such a record of a riot it be contained, that the party was guilty therein of a felony, or maim, or rescous, the party shall be concluded thereby as to the riot only, and not as to any of the other matters, because the justices of peace have by this statute a judicial authority over no other offences, except riots, routs, and unlawful assemblies. 1 *Hawk. c.* 65. *s.* 26.

And inasmuch as such a record is a final conviction of the parties as to all such matters as are properly contained in it, it ought to be certain both as to the time and place of the offence, and the number of persons concerned therein, and the several kinds of weapons made use of by them, and all other circumstances of the fact; for since the parties are concluded from denying the truth of such record, and have no other remedy to defend themselves against it, but only by taking advantage of the insufficiency of what is contained in it, they may justly demand the

benefit of excepting to it, if it do not expressly shew, both that they are guilty within the meaning of the statute, and also how far they are guilty, and that the justices have pursued the power given them by the said statute. 1 *Hawk. c.* 65. *s.* 27.

And upon this ground, where *T* and three others were convicted of a riot upon view of two justices of peace, and the sheriff of the county, *and they were fined by the justices;* upon a writ of error brought, assigning for error, 1st, that it did not appear that the defendants were convicted by view of the justices; 2dly, that the sheriff did not join in setting the fine, whereas the statute says, that *the sheriff shall be joined with the justices* in the whole proceedings; the judgment for these errors was reversed. *T. Raym. Rep.* 386.

It is said, that the offenders being under the arrest of the said justices, and also convicted by a record of their offence, ought to be immediately committed to gaol by the same justices, till they shall make fine and ransom to the king, which can be assessed by no other justices of peace except those by whom the record of the offence was made. 1 *Hawk. c.* 65. *s.* 28.

And this fine, saith *Dalton*, the justices shall cause to be estreated into the *Exchequer*, that so it may be levied to the king's use. *Dalton, c.* 82.

And by 2 *Hen.* 5. *c.* 8, 'the fines of such rioters shall be by the said justices increased and put in greater sums than they were wont to be. *s.* 2.

And thereout, saith *Dalton*, the sheriff may pay the charges of the said justices and of the jury; that is, for their diet, and the sheriff's fees, and the like. *Dalton, c.* 82.

It being also provided by 2 *Hen.* 5. *c.* 8, 'that the said justices 'and other officers shall execute their offices aforesaid, at the 'king's costs, in going and continuing in doing their said offices, 'by payment thereof to be made by the sheriff, by indenture be'twixt the said sheriff and justices and other officers aforesaid, 'whereof the sheriff upon his account in the *Exchequer* shall have 'due allowance.' *s.* 1.

It is also further enacted by the said stat. 13 *Hen.* 4. *c.* 7, 'that if such offenders be departed before the coming of the 'justices and sheriff, the same justices, three or two of them, 'shall diligently enquire, within a month after, of such riot, as'sembly, or rout, and shall hear and determine the same accord'ing to the law of the land.' *s.* 1.

That is by a jury; and for this purpose it is enacted by 19 *Hen.* 7. *c.* 13, 'that if any riot, rout, or unlawful assembly, be 'committed, the sheriff having a precept (IV) directed to him,

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(IV) The form of a precept to the sheriff, in the nature of a *venire facias*, to return a jury.

Monmouthshire, { *J P and S J, esqrs. two of the justices of our sovereign lord the king assigned to keep the*

'shall return twenty-four persons dwelling within the shire, 'whereof every of them shall have lands within the shire to the 'yearly value of 20s. of charter land or freehold, or 26s. 8d. of 'copyhold, or of both, above all charges, to enquire (V) of the 'said riot, rout, or unlawful assembly.

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*peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, to the sheriff of the said county of M, greeting: On behalf of our said lord the king, we command you, that you cause to come before us at ——— in the county aforesaid, on —— the —— day of —— next ensuing, twenty-four honest and lawful men of the county aforesaid, every one of which shall have lands and tenements within the said county to the yearly value of twenty shillings, of charter land or freehold, or twenty-six shillings and eight-pence of copyhold, or of both, over and above all charges, to enquire upon their oath for our said lord the king of certain riots, routs, and unlawful assemblies at ———, in the county aforesaid, lately committed, as it is said, and you are to return upon every of the jurors by you in this behalf to be impanelled* 20s. *of issues at the aforesaid day, to be by them severally forfeited if they shall not appear and be sworn to enquire of the premises at the time and place aforesaid; and have you then and there the names of the jurors and this precept; and this you shall in no wise omit under the pain that will thereon ensue. Given under our hands and seals at ——— aforesaid, the ——— day of ———, in the said ——— year of the reign of ———.*

### (V) THE JUROR'S OATH.

*You shall true inquiry and presentment make of all such things as shall come before you concerning a riot, rout, and unlawful assembly, said to have been lately committed at ———, in this county; you shall spare no one for favour and affection, nor grieve any one for hatred or ill will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you.* So help you God.

*The oath that F F your foreman hath taken on his part, you and every of you shall truly observe and keep on your parts.* So help you God.

The form of the inquisition.

Monmouth-shire. } *An inquisition indented, taken for our sovereign lord the king, at ——— in the county of ——— the ——— day of ——— in the ——— year of the reign of our*

'And he shall return upon every person impanelled in issues, 'at the first day 20*s.* and at the second day 40*s.* and if default be 'found in the sheriff for returning of other persons, or not, he 'shall forfeit to the king 20*l.*'

*Hawkins* says, it is not clearly settled whether the month within which the justices of peace are confined to take their enquiry by force of these statutes, must be reckoned according to

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*sovereign lord* George *the third, by the grace of God of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, &c. before us J P and S J, esqrs. justices of our said lord the king, assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, upon the oath of F J, S J, &c.* [here set forth the names of the jurors] *honest and lawful men of the county aforesaid, duly chosen, and who being then and there duly sworn and charged to enquire for our said lord the king concerning a certain riot, rout, and unlawful assembly lately committed at* ——— *aforesaid, in the county aforesaid, do upon their oath say, that F R, of* ———, *S R of* ———, *and T R, of* ———, *together with divers other malefactors and disturbers of the peace of our said lord the king, to the number of* ——— *persons and upwards, to the jurors aforesaid, as yet unknown, on the* ——— *day of* ———, *now last past, at* ——— *aforesaid, in the county aforesaid, with force and arms, did unlawfully, riotously, and routously assemble and gather together, to disturb the peace of our said lord the king, and so being then and there assembled and gathered together, in and upon one P G, spinster, in the peace of God and of our said lord the king then and there being, unlawfully, riotously, and routously did make an assault, and her the said P G then and there unlawfully, riotously, and routously did beat, wound, and ill treat, and other wrongs to the said P G then and there unlawfully, riotously, and routously did; to the great damage of the said P G, and disturbance of the peace of our said lord the king, and to the terror of his people, and against the form of the statute in such case made and provided. In witness whereof the said F J, S J, &c.* [the jurors] *have to this inquisition set their hands and seals, the day, year, and place first above mentioned.*'

*F J.*
*S J, &c.*

*We the above-named justices do hereby impose upon the above-mentioned offenders the several and respective fines following, that is to say, upon F R, the sum of* 10l. *upon S R, also the sum of* 10l. *and upon the aforesaid T R, a like sum of* 10l.

*J P.*
*S J.*

the computation of a lunar or solar month *. 1 *Hawk. c.* 65. *s.* 31.

But he says, it seems to be agreed, that if the justices give their charge to the jury, and it is said, that if they do but award a precept for the returning of the jury, within a lunar month, they may take the verdict afterwards, for the cause being regularly attached in them within the time prescribed by the statute, shall be prosecuted as all other cases ought, with such convenient dispatch as to the judges thereof shall seem proper; and the statute, by obliging the justices to make so speedy an enquiry, means not to hurry them in the execution of it. 1 *Hawk. c.* 65. *s.* 31.

Also it is generally said, that any justice of the county may take such an inquiry, whether they dwell near the place where the riot happened, or at a distance, or whether they went to view the riot or not; for the statute ought to be construed as largely as the words will bear, in favour of the justices' power in the suppressing of such riots; and therefore these words in the statute, *that the same justices, &c. shall enquire*, ought to be thus expounded, that *the same justices who were before empowered to raise the posse*, &c. shall enquire; and it is clear that any justices in the county are within that part of the statute which gives that power. 1 *Hawk. c.* 65. *s.* 32.

But it seems clear from the wording of the above-mentioned clause, that the sheriff ought not to join with the justices in taking of such an enquiry, as he ought to do in making a record of a riot upon view. 1 *Hawk. c.* 65. *s.* 33.

Also it seems clear from the words in the said statute of 13 *Hen.* 4. *c.* 7, *that the same justices shall hear and determine*, that they may award process under their own teste against those who shall be indicted before them of any of the offences above mentioned, according to the form of the said statute; and also that they may award the like process for the trial of a traverse of such an inquisition, and do all other things in relation thereunto, which are of course incident to all courts of record. 1 *Hawk. c.* 65. *s.* 34.

But it hath been questioned, whether the justices can safely dismiss the offenders upon their paying such a fine as shall be imposed upon them, without some judgment for their imprisonment as well as fine, inasmuch as the statute 2 *Hen.* 5. *c.* 8. *s.* 2, is express, that 'all rioters attainted of great and heinous riots shall 'have one year's imprisonment, and rioters attainted of petty riots

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* This seems to arise from the case of the *K.* v. *Cussens* reported, in *Siderfin*, 186, *pl.* 9, where the court said, that the month shall not be confined to twenty-eight days, but to the almanack month; and yet it is said in *Co. Lit.* 135-6, and in *Cro. Jac.* 167, that generally *in all cases where a statute speaks of a month* it shall be construed to mean a lunar month, that is twenty-eight days shall be accounted a month.

'shall have imprisonment as best shall seem to the king and his 'council.'

It is also further enacted by the said statute of 13 *Hen.* 4. *c.* 7, 'if the truth cannot be found, then within a month next following, the justices, three or two of them, and the sheriff, shall 'certify before the king and his council all the deeds and circumstances thereof, which certificate shall be of like force as 'the presentment of twelve men; upon which certificate the 'offenders shall be put to answer, and they which be found guilty shall be punished after the discretion of the king and his 'council.' s. 2.

'And if such offenders traverse the matter certified, the certificate and traverse shall be sent to the *King's Bench* to be 'tried and determined; and if the offenders do not come before the king and his council at the first command, there shall 'be made another, directed to the sheriff, to take the offenders if 'they may be found, and bring them at a certain day before the 'king and his counsel, or in the *King's Bench*; and if they cannot 'be found, the sheriff shall make a proclamation in the county 'next ensuing the delivery of the said second command, that they 'come before the king and his council, or in the *King's Bench*, 'or in the *Chancery* in time of vacation, within three weeks then 'following; and in case the offenders come not, and the proclamation made and returned, they shall be convict of the riot, assembly, or rout.' *s.* 3.

And by 19 *Hen.* 7. *c.* 13, 'if the riot, rout, or unlawful assembly, 'be not found by the jury, by reason of any maintenance or 'embracery, the justices and the sheriff shall in the certificate 'certify the names of the maintainers and embracers, with their 'misdemeanors, upon pain of every of the said justices, and sheriff or under-sheriff to forfeit 20*l.* if they have no reasonable excuse; which certificate shall be of like force, as if the matter 'were found by verdict of twelve men; and every person 'proved to be a maintainer or embracer in the same shall forfeit 'to the king 20*l.* and as well the maintainers as embracers shall 'be committed to ward by the discretion of the justices.'

In the construction of these statutes, it hath been holden, that the certificate required by the above-mentioned statutes may be made either by the justices, &c. who went to see the riot, or by those who took the enquiry; but it seems to be most proper, that wherever such an inquisition is taken, such certificate should be made by such justices who made the enquiry; because they having had the examination of the fact, must needs be able to judge of the circumstances thereof, and in that respect are the most proper persons to supply the defect of the enquiry. 1 *Hawk.* c. 65. *s.* 39.

Also it is generally said, that such a certificate must be made within a month after the enquiry; and this seems to be a very reasonable construction where an enquiry has actually been

made: but it may happen that no enquiry at all may be taken either through the default of the sheriff in not returning a jury, or the obstinacy of the jurors in refusing to appear, or the rebellious humour of the people in not suffering the justices to do their duty; in all which cases a certificate seems to be required, both by the intent and letter of the statute, the words whereof as to this purpose, are, 'if the truth cannot be found in the manner as is aforesaid, then within a month,' &c. and therefore in these cases it seems proper to make a certificate of the obstructions which prevented the taking of such an enquiry, within a month after they happen. 1 *Hawk. c.* 65. *s.* 40.

And it seemeth clear from the plain words of the statute, that the certificate ought to be made to the privy council board, which is clearly distinguished, both from the *Chancery* and also from the *King's Bench*, which in some statutes relating to judicial proceedings are taken for the king's council. 1 *Hawk. c.* 65. *s.* 41.

And it seemeth certain, that such a certificate, being in nature of an indictment at common law, ought to comprehend the certainty of time, place and persons, and other material circumstances, both of the riot and maintenance. 1 *Hawk. c.* 65. *s.* 43.

And it is further enacted by 13 *Hen.* 4. *c.* 7, that 'the justices 'of peace dwelling nighest where such riot, assembly or rout 'shall be made, together with the sheriff, and also the justices of 'assizes for the time that they shall be in their session, shall do execution of the same statute, every one upon pain of 100*l.*' *s.* 4.

In the construction of this clause the following opinions have been holden:

First; that no justice of peace is in danger of incurring the penalty thereof, unless he dwell in the county wherein a riot happens. 1 *Hawk. c.* 65. *s.* 45.

Secondly; that if any justices of peace, who do not dwell nearest to the place, do actually execute the statute, they excuse all the rest. 1 *Hawk. c.* 65. *s.* 46.

Thirdly; that if the justices whose dwelling was nearest at the time of the riot, or one of them, happen to die within the month, those whose dwelling is thereby become the nearest are bound to execute the statute, in the same manner as the others were. 1 *Hawk. c.* 65. *s.* 47.

Fourthly; that notwithstanding those justices only who dwell nearest are liable to the penalty of the statutes, yet if any others on notice neglect to supply their default, they are finable at discretion. 1 *Hawk. c.* 65. *s.* 48.

Fifthly; that if the two justices, or one of them, do their duty in executing or endeavouring to execute the statute, they shall not incur any penalty through a default of the sheriff, either in refusing to appear, or to return a jury. 1 *Hawk. c.* 65. *s.* 49.

Sixthly; that the said justices, &c. shall not avoid the penalty by executing the statute in part only, as by recording a riot without committing the parties. 1 *Hawk. c.* 65. *s.* 5.

Seventhly; that no justice, &c. is subject to the penalty of the said statute on account of a *petit riot*, but only of such as are notorious, and in nature of insurrections and rebellions. 1 *Hawk. c.* 65. *s.* 51.

Eighthly; that if a justice of peace, &c. had no express notice given him of the riot, he shall be excused, unless it were so very flagrant, that by common intendment, every one dwelling near it could not but have notice thereof. 1 *Hawk. c.* 65. *s.* 52.

Ninthly; that the acquiescence or agreement of the parties aggrieved, is no excuse to the justices, because they ought, *ex officio*, to make the enquiry and make proclamation whether any will give evidence for the king, and may bind such of the parties grieved, as shall refuse to prosecute their complaint, to their good behaviour. 1 *Hawk. c.* 65. *s.* 53.

Also, it is further enacted by 2 *Hen.* 5. *c.* 8, that 'if default be 'found in the said justices of peace, or justices of assize (named in 'the statute 13 *Hen.* 4. *c.* 7.), and the sheriff or under-sheriff of 'the county where such riot, assembly or rout, shall be made, 'touching the execution of the said statute; at the instance of 'the party grieved, the king's commission shall go out under his 'great seal, to enquire as well of the truth of the cause and of the 'original matter, as of the defaults of the justices, sheriff or under-'sheriff, to be directed to indifferent persons, at the nomination of 'the chancellor; and the commissioners shall send into the chan-'cery the inquest before them taken; and the coroners shall make 'the pannel for the time that the sheriff, that is supposed in default, 'shall stand in his office; which coroners shall return no persons 'but such which have lands to the value of 10*l.* by the year; and 'the coroner shall return upon the persons impanneled at the first 'day issues to 20*s.*, and at the second day 40*s.*; and at the third 'day 100*s.* and at every day after, the double at least; and if 'default be found in the coroners, touching the return of such per-'sons impanelled, or touching the return of issues, every one of 'them shall pay to the king 40*s.*, and if the sheriff be dis-'charged of his office, the new sheriff shall make the pannel. *s.* 1.

'And the chancellor, as soon as he may have knowledge of such 'riot, assembly or rout, shall cause to be sent the king's writ to the 'justices of peace, and to the sheriff, that they put the statute 'in execution, upon the pain contained in the same; and though 'such writ come not to the justices or sheriff, they shall not be 'excused if they make not execution of the statute. *s.* 1.

But all the penalties of the above-mentioned statutes having been found by experience not to be sufficient to restrain the rage of the populace from breaking out into dangerous tumults, whenever they happen to be persuaded that they lie under any real or pretended grievance, it was thought necessary to make a further provision against such insolent disturbances of the peace by more severe laws. 1 *Hawk. c.* 65. *s.* 56.

And it is enacted accordingly by the statute of 1 *Geo.* 1. *c.* 5,

which is required to be read at every quarter sessions and leet, *s.* 7, that 'if any persons to the number of twelve or more, being 'unlawfully, riotously and tumultuously assembled together to 'the disturbance of the public peace; and being required or 'commanded by any justice of peace, sheriff of the county, or 'under sheriff, or by the mayor, bailiff or bailiffs or other head 'officer or justice of the peace of any city or town corporate 'where such assembly shall be, by proclamation to be made in 'the king's name, to disperse themselves and peaceably depart 'to their habitations or to their lawful business, shall to the 'number of twelve or more, notwithstanding such proclamation 'made, unlawfully, riotously, and tumultuously remain or con-'tinue together by the space of one hour after such command 'or request made by such proclamation, such continuing toge-'ther, to the number aforesaid, shall be FELONY WITHOUT 'BENEFIT OF CLERGY. *s.* 1.

'And the form of the proclamation shall be in manner follow-'ing, *viz.* the justice of peace, or persons aforesaid, shall among 'the rioters, or as near to them as he can safely come, with a 'loud voice command, or cause to be commanded, silence while 'proclamation is making, and then shall openly, and with loud 'voice, make or cause to be made proclamation in these or like 'words:

*Our sovereign lord the king chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of king* George, *for preventing tumults and riotous assemblies.*

*God save the king.*

'And every such justice, sheriff or under sheriff, mayor, bailiff, 'or other head officer, on notice of such unlawful assembly, is 'to resort to the place, and make proclamation in manner afore-'said. *s.* 2.

'And if such persons so unlawfully assembled, shall, after pro-'clamation made, not disperse themselves within one hour, it 'shall be lawful for every justice, sheriff, or under sheriff, and 'for every high or petty constable, or other peace officer of the 'county, and also for every mayor, justice, sheriff, bailiff, and 'other head officer, high or petty constable, and other peace 'officer of any city or town, and for such other persons as shall 'be commanded to be assisting to such justices, or other persons 'aforesaid (who are empowered to command all his majesty's 'subjects, of age and ability, to be assisting), to seize such 'persons and carry them before a justice of peace; and if such 'persons shall be killed or hurt by reason of their resisting the 'persons so dispersing or seizing them, such justices and persons 'aiding them shall be indemnified. *s.* 3.

'And if any persons unlawfully, riotously, and tumultuously 'assembled together* to the disturbance of the public peace, 'shall unlawfully, and with force, demolish or pull down, or 'begin to demolish or pull down, any church or chapel, or any 'building for religious worship certified and registered according 'to the act 1 *Will. & Mar. c.* 18†, or any dwelling-house, barn, 'stable or other outhouse (or any wind saw-mill, or other wind-'mill, or any water-mill, or other mill, or any of the works 'thereto respectively belonging, 9 *Geo.* 3. *c.* 29. *s.* 1. ‡), every 'such demolishing or pulling down, or beginning to demolish or 'pull down, shall be FELONY WITHOUT BENEFIT OF CLERGY.' *s.* 4.

'And if any person shall with force oppose, or in any manner 'wilfully hinder or hurt, any person who shall begin to proclaim, 'whereby such proclamation shall not be made, such offenders 'shall be adjudged FELONS WITHOUT BENEFIT OF CLERGY.

'And all persons so unlawfully assembled to the number of 'twelve, to whom proclamation ought to have been made, if the 'same had not been hindered, shall, if they continue together 'one hour after such hindrance, knowing thereof, be adjudged 'FELONS WITHOUT BENEFIT OF CLERGY.' *s.* 5.

'And if any such church or chapel, or any such building for 'religious worship, or any such dwelling-house, barn, stable, or 'other out-house, (or any wind saw mill or any water mill or 'other mill, or any of the works thereunto belonging' (41 *Geo.*3. *sess.* 2. *c.* 24.) 'shall be demolished wholly or in part by any 'persons so riotously assembled, the inhabitants of the hundred 'shall yield damages to the persons damnified by such demoli-'tion, which may be recovered in any court at *Westminster* 'against any two of the inhabitants; such action for damages to 'any church, &c. to be brought in the name of the rector, 'vicar, or curate, in trust for rebuilding and repairing such 'church, &c. and the judgment being given for the plaintiff in 'such action, the damages recovered shall, at the request of such 'plaintiff, be levied on the inhabitants, and paid to such plaintiff 'by such ways as are provided by 27 *Eliz. c.* 13, for reim-'bursing any money recovered by any party robbed; and if 'such church, &c. shall be in any city or town that is either a 'county of itself, or is not within any hundred, such damages 'shall be recovered against two or more inhabitants of such city 'or town.' *s.* 6.

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* That is, although there be not *twelve or more* persons present, for according to the most obvious construction *that number is not necessary* to constitute the felony created by this clause. 2 *Doug. Rep.* 700. 5 *Term Rep.* 14.

† The toleration act, inserted under title DISSENTERS.

‡ For burning of mills, see title FELONY without Clergy, § *Arson.*

Limitation of prosecution.

'But no person shall be prosecuted for any offence contrary 'to the act 1 *Geo.* 1. *c.* 5, unless prosecution be commenced 'within twelve months after the offence committed. *s.* 8.

'And no person shall be prosecuted under the act 9 *Geo.* 3. '*c.* 29, for demolishing mills, unless the prosecution be commen'ced within eighteen months after the offence. 9 *Geo.* 3. *c.* 29. '*s.* 6.'

In the construction of the above statute of 1 *Geo.* 1. *c.* 5, the following points seem to have been holden:

First; that persons present *aiding and abetting* others unknown in beginning to demolish and pull down the dwelling-house, *who are principals in the second degree*, are within this statute: and where the jury found a special verdict, that the party was present and *did* then and there *encourage and abet* the persons unknown, in beginning to demolish and pull down the said dwelling-house, 'by then and there shouting and using expressions to 'incite the said persons unknown so to do:' The court were clearly of opinion, that the verdict was sufficient to find the man to be a principal in the second degree, inasmuch as the jury had expressly found that he *encouraged and abetted* the offenders in doing the criminal act mentioned in the indictment; and had found *how* he encouraged and abetted them, and specified the circumstances of his doing so, which circumstances amounted to evidence in point of law sufficient to prove that he did encourage and *abet* them. 4 *Burrow's Rep.* 2073. 2081.

Secondly; that if persons riotously assembled, demolish the doors and windows of a house, and having thus riotously obtained an entrance into the house, destroy the goods and furniture in it, *the hundred are answerable* in an action on the statute *for the damage done to the furniture as well as to the house*: for if the act had never been made, the trespassers would have been liable to answer for *the whole* injury in damages: but as the act has altered the nature of the offence (which was before only a trespass) by enacting that it shall be felony, and capital, it is by the same law, in order to encourage people to resist persons thus riotously assembled, and to reward those who by doing their duty shall have encouraged their resentment, further provided, that *as the trespassers are to be hanged*, the country shall pay the damages: and this is to induce the inhabitants to be active in suppressing such riots, which it is their duty to do; and which being thus made their interest too, they are more likely to execute. *Ratcliffe* v. *Eden*, *Mic. Ter.* 17 *Geo.* 3. *Cowper's Rep.* 488.

And this point was further confirmed, first in the case of *Wilmot* v. *Horton*, in the *Common Pleas*, and again in the case of *Hyde* v. *Cogan*, *Tr. Ter.* 21 *Geo.* 3, in the former of which cases lord *Loughborough* said, that antecedent to this statute and till the trespass was turned into a felony, there is no doubt that against the actors and abettors the party injured would hav

been entitled to recover damages for *all his loss*; and in lieu of that remedy, which no longer can be had, it was thought better to substitute an action against the hundred in analogy to the ancient policy of the kingdom, by which the men of each district were bound to maintain peace and order, and to answer for the violation of them within that district*. 2 *Doug. Rep.* 8*vo. ed.* 702.

And in the case of *Hyde* v. *Cogan*, Mr. Justice *Milles* observed, that the words of the act are, that the inhabitants of the hundred in which such damage shall be done, shall be liable to *yield damages* to the person or persons injured by *such demolishing* or pulling down. What damages? The value of the house is not the *whole* of the damage, the furniture may be worth twice as much as the building. 2 *Doug.* 8*vo. ed.* 705.

But the demolishing of the furniture must be one continued act, that is, it must be done at the same time, and in pursuance of the riotous demolishing of the house; for if such demolishing of the furniture be a separate act†, it will not be felony, and the sufferer, consequently, cannot recover against the hundred; per *Ashhurst* J. in the same case. 2 *Doug.* 8*vo. ed.* 705.

Thirdly; it has been determined, that to support an action against the hundred for damages for the riotous demolition of a house, it is not necessary to prove that twelve rioters were assembled at the time; for the court said, that it had been solemnly determined, that it was not necessary that twelve persons should be assembled to constitute a capital crime on the fourth clause of the statute for riotously demolishing a house; the words of which clause were pursued in this respect by the clause giving the remedy against the hundred; that it was to be remarked, that in the preceding sections of the act the number twelve was particularly mentioned as descriptive of the offence thereby created; but it was omitted in the fourth clause, which made it felony to demolish any house or the like, and also in the one in question, giving the remedy against the hundred; which latter too, being a remedial clause, made the consideration of the numbers assembled less important. 5 *Term Rep.* 14.

Fourthly; The hundred are not liable in an action for damages brought by the person injured by a mob *beginning to pull down his house*, unless the mob be of such a kind as to amount to felony, within the statute of 1 *Geo.* 1; and therefore the breaking of the plaintiff's windows by a mob, because he would not illuminate his house on a public rejoicing, was held not to

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* See this in vol. i. p. 537, 538; and vol. 3. p. 154.

† Such as if the rioters break down the doors and demolish the windows, *and leave the house*, and afterwards some person comes in and destroys the furniture, this is a distinct act, and the damage only consequential. *Cowper's Rep.* 489.

be such an act for which the hundred was liable to make good the damages, the same not being a felony within the meaning of the act. *Reid* v. *Clarke and others, Hil.* 38 *Geo.* 3. 7 *Ter. Rep.* 496.

Fifthly; Where a mob attacked a baker's house, and broke the glass and shutters of the windows, and compelled him to sell flour at a price named by themselves below the marketable value, the court held this not to be sufficient evidence *of a felonious beginning to demolish the house* within the fourth section of the riot act, to be left to the jury; and that the plaintiff might recover for the damages done to the house in an action against the hundred on the 6th section, but not for the value of the flour so sold; that not being consequential to the act of demolition: nor could he recover for the value of other flour taken and wasted in another warehouse distinct from his dwelling house on the opposite side of the street, of which the lock only was burst; that not being *a beginning to demolish* within the act, with the view with which it appeared to have been done, *Burrows* v. *Wright and others, Tr.* 41 *Geo.* 3. 1 *East's Rep.* 615.

Sixthly; So where a mob, after beginning to demolish and pull down a house, steal flour therein, the value thereof cannot be recovered in an action against the hundred, such stealing and robbery being substantive felonies, and not within the offence created by the 4th section of the act. But flour spoiled or destroyed at the time of the beginning to demolish, may be recovered. *Greasley* v. *Higginbottom et al. Tr. Ter.* 41 *Geo.* 3. 1 *East's Rep.* 636.

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# RIVERS NAVIGABLE.

See also *CANALS.*

Destroying locks, sluices, or other works, on any navigable river, felony without benefit of clergy.

BY 8 *Geo.* 2. *c.* 20, *made perpetual by* 27 *Geo.* 2. *c.* 16, if any person shall wilfully or maliciously pull down or destroy any lock, sluice or other works, on any navigable river, erected, or to be erected by authority of parliament; or forcibly rescue any person, being lawfully in custody, for the offences before mentioned, every person so offending shall be guilty of felony without benefit of clergy. *s.* 1.

But this shall not work corruption of blood, loss of dower, or forfeiture of lands or goods. *s.* 4.

And every offence aforesaid may be determined in any adjacent county in *England.* *s.* 3.

*Offenders discovering accomplices, entitled to a pardon.*

And if any person shall commit any of the offences declared to be felony by this act, and being out of prison, shall discover and cause to be apprehended one or more who shall commit any such offence, so that they be convicted, every such person, on conviction of the offenders, shall have his majesty's pardon for the felonies aforesaid. *s.* 5.

*Hundred to answer damages.*

And the inhabitants of every hundred in *England*, within which such offence shall be committed, shall make satisfaction for the damages; and the said damages may be recovered (not exceeding for any offence 20*l.*) by action, in the name of the clerk of the peace of the county, without naming the name of the clerk of the peace; and the damages to be recovered shall be to the use of the trustees or proprietors of such navigable river; and the inhabitants of such hundred shall be taxed for the relief of such inhabitants against whom execution shall be had, in such manner as in cases of robbery. *s.* 6.

But where any of the offenders shall be convicted within twelve months after such offence, any hundred who shall have made such satisfaction, shall be repaid out of the tolls. *s.* 7.

And no action shall be prosecuted to recover damages, by virtue of this act, unless information upon oath shall be made within six days, before some justice of peace where such offence shall be committed, inhabiting within the hundred or near the same. *s.* 9.

Nor unless such action be commenced within six months after such offence. *s.* 10.

*Commissioners may discharge costs of actions and prosecutions out of the tolls.*

And by 5 *Geo.* 2. *c.* 33, *made perpetual by* 27 *Geo.* 2. *c.* 16, the commissioners empowered to put in execution any act of parliament for making rivers navigable, may out of the tolls discharge the costs of *any action or prosecution* which shall be commenced on account of the pulling down or destroying any lock, sluice, or other works, on any navigable river, erected by authority of parliament. *s.* 3.

*Penalty on drawing up flood-gate.*

And by the said act of 8 *Geo.* 2. *c.* 20, if any person shall wilfully and maliciously draw up any flood-gates, erected by authority of parliament upon any navigable river, every person so offending, being convicted upon the oath of one witness, before two justices of peace of the adjacent county, shall be sent to the house of correction and be kept to hard labour for one month *. *s.* 2.

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* Note, the 4 *Geo.* 3. *c.* 12. *s.* 5, is as follows: 'Whereas the laws 'now in being are not sufficient for the preservation of the banks, 'flood-gates, sluices, and other works, belonging to rivers and streams 'made navigable by act of parliament, and for the maintaining the 'navigation on such rivers and streams;' it is enacted, that, if any person shall wilfully or maliciously break, throw down, damage or destroy any banks, flood-gates, sluices, or any other works, *or open or draw up any flood-gate*, or do any other wilful hurt or mis-

Penalty on assaulting or threatening the collectors of tolls on navigable rivers.

If any person shall assault any collector of the toll, or threaten him in the execution of his office, or shall forcibly pass through any fences without paying the toll; or if any person shall forcibly carry away or detain any collectors of the toll, so as they shall not be able to return to their duty for three days; in any of the said cases, the party offending, upon conviction by oath of one witness, before two justices of the county, liberty or division, where such offence shall be committed, inhabiting near the said division or place, shall forfeit 5*l.* one moiety to the informer, and the other moiety to the constable of the parish where such offence shall be committed, *to the use of the trustees, commissioners, proprietors, or undertakers of such navigable river*, to be levied by warrant of the justices by distress, and sale of goods; and for want of distress, the party offending shall, by warrant of such justices, be sent to the common gaol of the county for six months, unless he be sooner discharged by order at the quarter-sessions; and if such party shall offend a second or third time, he shall forfeit 10*l.* in manner aforesaid, and for want of distress shall be sent by two justices to the common gaol for one year, and shall also give security at the quarter-sessions for his behaviour for seven years. *s.* 11.

Collectors of toll authorised to seize such offenders.

And such collectors of the toll may seize any person guilty of the offences before mentioned, and such persons carry before one or more justices, and such justice is authorized to oblige such person to give security for his appearing at the petty sessions, and for want of security, to commit the person to the common gaol until he give security. *s.* 12.

Penalty on officer not executing warrants of justices.

And if any constable shall refuse to execute any warrant under the hands of two justices, for apprehending any person that shall be guilty of any offence against this act; or if any other person shall refuse to assist such constable in apprehending such offenders, such constable or other person shall forfeit 5l. to the clerk to the commissioners, trustees, proprietors, or undertakers of such navigable river, for the like uses as the tolls shall be directed to be applied to; to be levied by distress, by warrant of two justices to be directed to the high constable, to be by him levied as before directed. *s.* 13.

Forfeitures to be paid according to the directions of trustees.

And all forfeitures by this act, received by any constable, or clerk to the commissioners, shall be paid over to any person to whom the commissioners, trustees, proprietors, or undertakers, or any five of them shall direct; and in case such constable or clerk shall refuse to account for or pay over the same, two justices, upon

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chief to any such navigation, so as to obstruct, hinder, or prevent the carrying on, completing, supporting, or maintaining such navigation, he shall be guilty of felony, and transported for seven years.

And for some observations on these acts, see vol. ii. p. 411.

oath of one witness, may commit the party refusing to the common gaol until he shall pay the same. s. 14.

But any person aggrieved may appeal to the next quarter-sessions, giving reasonable notice, which notice shall be determined by the quarter-sessions; and if it shall appear that reasonable notice was not given, they shall adjourn the appeal to the next quarter-sessions, and the quarter-sessions shall hear the matter, and award costs to either party. s. 15. Appeal.

And no *certiorari* shall be granted for removing any orders or proceedings of justices concerning the matters in this act. *s.* 16.

*For the penalty on casting ballast into havens or navigable rivers, under* 19 Geo. 2. c. 22, see title *HARBOURS.*

*Robbery.* See FELONY, *and* HUE AND CRY.

*Rogues.* See VAGRANTS.

*Rum.* See EXCISE.

*Rout.* See RIOT.

*Running of goods.* See SMUGGLING.

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## SABBATH.

THE profanation of the Lord's day, vulgarly, but improperly called *sabbath breaking*, is an offence against God and religion, punished by the municipal law of *England*; for besides the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day, in a country professing christianity, and the corruption of morals which usually follows its profanation, the keeping one day in seven holy, as a time of relaxation and refreshment as well as for public worship, is of admirable service to a state, considered merely as a civil institution. It humanizes by the help of conversation and society the manners of the lower classes, which would otherwise degenerate into a sordid ferocity and savage selfishness of spirit: it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness: it imprints on the minds of the people that sense of their duty to God *so necessary to make*

*them good citizens*; but which yet would be worn out and defaced by an unremitted continuance of labour, without any stated times of recalling them to the worship of their Maker. 4 *Black. Com.* 63.

Fairs and markets prohibited on *Sundays.*

And therefore, by 27 *Hen.* 6. *c.* 5, all manner of fairs and markets upon feast days, or on *Sundays* (the four *Sundays* in harvest excepted), shall clearly cease, on pain of forfeiting the goods exposed to sale.

Pastimes on *Sundays.*

And it is enacted by 1 *Car.* 1. *c.* 1, that there shall be no meetings or concourse of people *out of their own parishes* on the Lord's-day for any sports and pastimes; nor any bear-baiting, bull-baiting, interludes, common plays or other unlawful exercises, used by any *within their own parishes*; and every person so offending shall forfeit 3s. 4d. to the use of the poor of the parish; and if any justice of peace, or the chief officers of any city, borough or town corporate, upon their view or confession of the party, or proof of one witness by oath, shall find any person offending in the premises, the said justice or chief officer shall give warrant to the constables and churchwardens of the parish, to levy the penalty by distress and sale of goods; and in default of distress, that the party offending be set in the stocks three hours; but no man shall be impeached by this act, except he be called in question within one month after the offence; and the ecclesiastical jurisdiction shall not be abridged.

But this statute does not prohibit, but rather impliedly allows, any innocent recreation or amusement, *within their* respective parishes, even on the Lord's-day, after divine service is over. 4 *Black. Com.* 63, 64.

And king *James* the first, in 1618, publicly declared to his subjects, in what was called the Book of Sports, these games following to be *lawful*, viz. dancing, archery, leaping, vaulting, *May* games, *Whitsun* ales, and morris dances; and did command that no such honest mirth or recreation should be forbidden to his subjects *on* Sunday *after evening service:* but restraining all recusants from this liberty, and commanding each parish to use these recreations by itself, and prohibiting all *unlawful* games, bear-bating, bull-baiting, interludes, and bowling by the meaner sort. *Dalton*, c. 46.

But by 21 *Geo.* 3. *c.* 49, any house, room, or other place, opened or used 'for public entertainment or amusement, or for 'publicly debating on any subject, upon any part of the Lord's 'day, and to which persons shall be admitted by the payment of 'money, or by tickets sold for money,' shall be deemed a disorderly house or place; and the keeper shall forfeit two hundred pounds for every day that such place shall be opened or used, to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses. *s.* 1.

And the person managing such entertainment or amusement, or acting as master of the ceremonies there, or as moderator, pre-

sident, or chairman of any public debate, shall likewise, for every offence, forfeit one hundred pounds to such person as will sue for the same. *s.* 1.

And every door keeper, servant, or other person, who shall collect or receive money or tickets from persons assembling at such place, or who shall deliver out tickets for admitting persons to such house, on the Lord's day, shall also forfeit fifty pounds to such person as will sue for the same. *s.* 1.

And any person advertising, or causing to be advertised any such entertainment or meeting, and also any person printing or publishing any such advertisement, shall forfeit 50*l.* for every offence, to any person who will sue. *s.* 3.

And any person may sue for the forfeitures, within six months after the offence, by action of debt in any court of record at *Westminster*, and the plaintiff if he recover shall have full costs. *s.* 4, 5.

And any person who shall act as master or mistress, or as the person having the care, government, or management of such place, shall be deemed the keeper, and liable to be punished as such, notwithstanding he be not the real owner or keeper thereof; and whenever any such place shall belong to divers persons in partnership, each shall be deemed the keeper thereof, and liable to be sued: and any place at which persons shall be supplied with tea, coffee, or any other refreshments of eating or drinking on the Lord's day, at any other prices than the usual prices at which the like refreshments are commonly sold upon other days at such place, or at coffee-houses, or other houses where the same are usually sold, shall be deemed a place to which persons are admitted by the payment of money, although money be not there taken for admittance, or at the time when persons enter into or depart from such place: and any place that shall be opened or used for any of the above purposes on the Lord's day, at the expence of any number of subscribers, and to which persons shall be admitted by tickets, to which the subscribers shall be entitled, shall be deemed a place to which persons are admitted by the payment of money. *s.* 2.

But this act is not to abridge the ecclesiastical jurisdiction; or any of the liberties granted to protestant dissenters. *s.* 7, 8.

Exercising worldly calling on the Lord's day.

By 1 *Jac.* 1. *c.* 22, no *shoemaker* shall shew to the intent to put to sale, any shoes, boots, buskins, startops, slippers, or pantofles, upon the *Sunday*, on pain of 3*s.* 4*d.* a pair, and the value thereof, to be recovered at the assizes, sessions or leet; one third to the king, one third to him who shall sue, and one third to the town or lord of the leet. *s.* 28. 46. 50.

And by 3 *Car.* 1. *c.* 2, no *carrier* with horses or waggons, nor *car-men* with carts, nor *drovers* with cattle, shall travel upon the Lord's day, upon pain to forfeit 20*s.*; or if any *butcher* shall kill or sell any victual upon the said day, such butcher shall forfeit 6*s.* 8*d.* the said offences being done in view of any justice of

peace, mayor, or other head officer, of any city or town corporate, or being proved upon oath by two witnesses, or by confession of the party, before any such justice, mayor, or head officer: all which penalties may be levied by any constable or churchwarden by warrant from any such justice, mayor, or other head officer, by distress and sale of goods; or shall be recovered by any that will sue in any court of record in any city or town corporate, or before justices of the peace in their general sessions; all which forfeitures shall be employed to the use of the parishes; saving that it shall be lawful for any such justice, mayor, or head officer, out of the forfeitures, to reward any that shall inform, so that such reward exceed not the third part of the forfeiture; but no person shall be impeached by this act, unless he be questioned within six months after the offence.

*Or if any butcher shall kill or sell.*] This is no offence at common law; an indictment hereon must therefore conclude *against the form of the statute*; and if it wants these words, it will, on demurrer, be quashed. 1 *Strange*, 702.

And by 29 *Car.* 2. *c.* 7, all the laws in force concerning the observation of the Lord's day, and repairing to church thereon, shall be put in execution *; and all persons shall on every Lord's day apply themselves to the observation of the same, by exercising themselves in piety and true religion publicly and privately. *s.* 1.

And no person shall do any 'worldly labour or work of their 'ordinary callings upon the Lord's day, works of necessity and 'charity excepted;' and every person of the age of fourteen years or upwards offending in the premises, shall forfeit 5*s.* *s.* 1.

And no person shall publicly cry, shew forth, or expose to sale any 'wares, merchandizes, fruit, herbs, goods or chattels whatsoever' upon the Lord's day, upon pain to forfeit the same goods. *s.* 1.

And no 'drover, horse-courser, waggoner, butcher or higler,' shall travel † or come into their inn or lodging upon the Lord's day, upon pain to forfeit 20*s.*

And no person shall travel upon the Lord's day with any boat, wherry, lighter or barge, except upon extraordinary occasions,

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* For the offence of *not resorting to church on a Sunday*, see title Church, in vol. i.

† And if any person whatsoever which shall travel upon the Lord's day shall be then robbed, no hundred shall be answerable; nevertheless the inhabitants of the counties and hundreds, after notice of any such robbery, or after hue and cry brought, shall make fresh pursuit after the offenders with horsemen and footmen, according to the statute 27 *Eliz.* *c.* 13, upon pain of forfeiting to the king as much money as might have been recovered against the hundred if this law had not been made. 29 *Car.* 2. *c.* 7. *s.* 5. See *Teshmaker*'s case on this clause, in vol. ii. p. 181.

to be allowed by some justice of peace or head officer (and except forty watermen appointed by the Watermen's company, who may ply on the Thames on Sundays betwixt Vauxhall and Limehouse, by 10 & 11 *Will.* 3. *c.* 24. *s.* 14.) upon pain to forfeit 5*s*. *s.* 2.

And if any person offending in the premises shall be convicted before any justice of peace, or chief officer, upon view or confession of the party, or proof of one witness by oath, the said justice or chief officer shall give warrant to the constables or churchwardens to seize the goods cried or put to sale, and to levy the other forfeitures by distress and sale of goods; and in default of distress, the offender shall be set in the stocks two hours; and all the penalties aforesaid shall be employed to the use of the poor of the parish, saving that it shall be lawful for any such justice, mayor or head officer, out of the penalties to reward any persons that shall inform, so as such reward exceed not the third part of the penalties. *s.* 2.

Exceptions.

But nothing in this act shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cookshops or victualling-houses, for such as otherwise cannot be provided. *s.* 3.

Nor to the crying of milk before nine in the morning or after four in the afternoon. *s.* 3.

'Nor to the selling of mackarel before or after divine service. '10 & 11 *Will.* 3. *c.* 24. *s.* 14.'

'Neither shall the said act extend to licensed hackney coach- 'men and chairmen within the bills of mortality. 9 *Ann.* *c.* 23. '*s.* 20.'

'Or any fish carriages, which are to be allowed to pass on '*Sundays*, whether laden or returning empty. 2 *Geo.* 3. *c.* 15. '*s.* 7.'

And no person shall be prosecuted for any offence before mentioned, unless he be prosecuted within ten days after the offence, 29 *Car.* 2. *c.* 7. *s.* 4.

*Works of necessity and charity excepted.*] A baker, baking things for dinner on a *Sunday*, falls within this exception; this was settled in the case of the *K.* v. *Cox*, 32 *Geo.* 2, where an information having been moved for against the defendant who was a justice of peace, for refusing to receive an information * against a *baker* for exercising his trade on a *Sunday*, contrary to the above statute of 29 *Car.* 2, it appeared on shewing cause, that the charge against the baker was not for baking of bread, which is the busi-

* Which he cannot legally do (see vol. iii. p. 146); but in this case it appeared, that the justice in fact *did not* refuse to receive the complaint; but on the contrary heard the charge, and then declared that it was not, in his opinion, and in the opinion of the rest of the justices, an offence within the act.

ness of a baker's ordinary calling, but for baking puddings and pies and meat for dinner. And the court were of opinion, that this was not an offence within the act; but falls within the exception of works of necessity and charity; and within the equity of the third section as being a cook's shop; there being the same reason that the baker should bake for others, as that a cook should roast and boil for them; and it is better that one baker and his man should stay at home, than many families and servants. 2 *Burrow's Rep.* 785.

So in the *K.* v. *Younger*, *Mic.* 34 *Geo.* 3, where the defendant, who was a baker, had been convicted under the stat. 29 *Car.* 2. c. 27, for having baked meat and pastry for divers persons on a *Sunday*; it was insisted that the defendant had not committed any offence within the above statute, and for this was cited the *K.* v. *Cox.*—THE COURT were clearly of opinion that the construction put upon this act in the *K.* v. *Cox*, is the right one, and that the case of the bakers, though not particularly mentioned in the exception of the act, is within the reason of it; and though by this means some few journeymen bakers are kept to work on a *Sunday*, it is for the general convenience of the public, because it enables the rest of the community to attend public worship, which they could not have an opportunity of doing if they had no means of having their dinners dressed from home*. 5 *Term Rep.* 449.

*However, for the better regulation of the business of a baker* IN THE CITY OF LONDON, OR WITHIN TWELVE MILES THEREOF, *it is enacted as follows, by the* stat. 34 Geo. 3. c. 61:—No master baker, journeyman baker, or other person carrying on the business of a baker in the city of *London*, or within twelve miles of the said city, shall, on any pretence whatsoever, make, bake, or expose to sale, any household or other bread, or rolls of any sort or kind, or bake any meat, puddings, pies, or tarts, or in any other manner exercise the trade or calling of a baker on the Lord's day, or any part thereof, except as hereinafter is mentioned; upon pain to forfeit 10*s.* on being convicted within six days before any justice of the county, city, or place, either upon his own view, or confession of the party, or the oath of one witness; the same to be levied by distress and

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* Lord *Kenyon* Ch. J. said, Thirty-four years have nearly passed since the decision of the case of the *K.* v. *Cox*, which informed the public that all bakers have a right to do what is imputed to this defendant as an offence; this circumstance alone ought to have some weight in the determination of this case; it would be cruel not only to the defendant, but also to those in a similar situation with him, if we were now to punish him for doing that which this Court publicly declared so many years ago might be done with impunity, and which so many persons have been doing weekly for such a number of years. 5 *Term Rep.* 450.

sale; and in default thereof, the offender to be committed to the house of correction, for not exceeding fourteen, nor less than seven days, unless the penalty be sooner paid, and the penalty shall within seven days after payment be transmitted by the justice to the churchwardens or overseers of the parish where the offence shall be committed, for the use of the poor. 34 *Geo.* 3. c. 61. *s.* 1. 3.

But nothing herein shall prohibit the selling of bread, or the baking meat, puddings, or pies only, between the hours of nine in the forenoon and one in the afternoon, 'so as the person requiring the baking shall carry or send the same to and from the 'place where the same is baked.' *s.* 2.

And the justice may cause the conviction to be drawn up in the following form: s. 4.

——— } *Be it remembered, that on this* —— *day of* ———
to wit. } A B *is convicted before me* ——— *one of his majesty's justices of the peace for the said county of* ——— [or as the case may be], *due proof being made before me, on the oath of* ——— [or *upon the confession of*, &c. as the case may be], *that* — — [specifying the offence, the time when, and the place where]; *and I do adjudge the said* ——— *to pay and forfeit for the same, the sum of* 10*s*. *Given under my hand and seal this* —— *day of* ——

And it is to be observed, that this offence can be committed but once in the same day; and if a justice of the peace proceed to convict an offender in more than one penalty for the same day, it is an excess of jurisdiction, for which an action will lie before the convictions are quashed. This was settled in the case of *Crips* v. *Durden*, which was an action against a justice of peace, for levying three more penalties, as for three more offences, on a baker for exercising his trade on a *Sunday* *, contrary to 29 *Car.* 2. *c.* 7, having already convicted him in *one* penalty for a similar offence *on the same day*. The court held that this offence could be committed but once in the same day. " For, (said Lord *Mansfield*) " on the construction of the act of parliament, the offence is exercising his ordinary trade upon the Lord's day; and that without any fraction of a day, hours, or minutes. It is but one entire offence, whether longer or shorter in point of duration; so whether it consist of one or a number of particular acts, the penalty incurred by this act is 5*s*.; there is no idea conveyed by the act itself, that if a taylor sews on the Lord's day, every stitch he takes is a separate offence; or if a shoemaker or carpenter work for different customers at different times on the same *Sunday*, that those are so many separate and distinct offences; there can be but one entire offence on one and the same day. And this is a much stronger case than that of killing more hares than one on

* It was for baking small hot rolls.

the same day. Killing a single hare is an offence; but killing ten more in the same day will not multiply the offence, or the penalty imposed by the statute for killing one. These repeated offences are not the object which the legislature had in view in making the statute; but singly to punish a man for exercising his ordinary trade and calling on a *Sunday*. Upon this construction, the justice had no jurisdiction with respect to the three last convictions." *Cowper's Rep* 640.

For the offence of *killing game* on a *Sunday*, see *GAME*.
For the offence of *executing process* on a *Sunday*, see *ARRESTS*, div. i.

The form of a warrant on 3 *Car*. 1. and 29 *Car*. 2. to levy the penalty of 20*s*. on a carrier, for travelling on a *Sunday*.

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|---|---|
| Monmouthshire, to wit. | To the constable of ——, in the said county, and to the churchwardens of the parish of ——— in the same county. |

*Whereas* O O *of* —— *in the county of* —— *is duly convicted before me* J P, *esq. one of his majesty's justices of the peace in and for the said county, for that he the said* O O *on the* —— *day of* —— *in the* —— *year of the reign of* —— *being the Lord's day, commonly called* Sunday, *with his horses into and through your said parish of* —— *did travel, contrary to the statutes in that case made and provided; whereby he hath forfeited the sum of twenty shillings of lawful money of* England: *These are therefore to authorise and command you forthwith to levy the said sum of twenty shillings, by distraining the goods and chattels of him the said* O O. *And if within the space of five days next after such distress by you taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, then you are hereby further authorized and commanded to sell the said goods and chattels so by you distrained, and out of the money arising by such sale, to pay the sum of six shillings and eight pence, part of the said sum of twenty shillings, to* J J *of* —— *who informed me of the said offence, and the remaining sum of thirteen shillings and four pence you are to employ to the use of the poor of your said parish of* ——, *returning to him the said* O O *the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted. And you are to certify to me, with the return of this precept, what you shall have done in the execution thereof. Given under my hand and seal at* —— *in the said county, the* —— *day of* ——.

*Sacrilege.* See FELONY.

*Sail-cloth.* See MANUFACTURES.

*Salmon.* See FISHERIES.

*Salt.* See EXCISE.

*Schoolmasters.* See DISSENTERS; OFFICES; PAPISTS.

———— For their powers in regard to the correction of scholars, see HOMICIDE.

*Sea Banks.* See BANKS OF THE SEA.

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# SEAMEN.

THE power of impressing mariners for the sea service by the king's commission, is founded upon immemorial usage allowed for ages, and is part of the common law. 1 *Black. Com.* 420. *Foster's Cr. L.* 157. *Cowper's Rep.* 517. Impressing seamen.

Therefore mariners, persons who have freely chosen a seafaring life, persons whose education and employment have fitted them for the service, and inured them to it, may be legally pressed into the service of the crown, whenever the public safety requireth it. *Foster's Cr. L.* 157. 159.

And the practice is deduced from an old maxim of the constitutional law of *England*, "that private inconvenience had better be submitted to, than public detriment ensue;" and there are many instances where private men must give way to the public good. *Cowper's Rep.* 518. *Foster's Cr. L.* 159.

But being founded in immemorial usage, there may be an exception out of it on the same foundation; namely, upon immemorial usage. *Cowper's Rep.* 518. Exemptions.

Thus it is said, that a ferryman, if it be on salt water, ought to be privileged from being pressed. *Savil*, 11. 14. 13 *Viner*, 208.

But a sea-faring man serving a parish office, is not thereby exempted from being impressed. 5 *Term Rep.* 276.

And whether the possession of a landed estate to a small amount will exempt a mariner is yet undecided. 1 *Black. Rep.* 51.

And when an exemption is claimed upon the ground of immemorial usage, very stronge evidence must be adduced in support thereof. *Cowper's Rep.* 520, 521, 522.

It is also said that the crown by its prerogative may grant an exemption from being pressed; because in the crown alone lies the power of issuing press warrants. *Cowper's Rep.* 521.

There are also many exemptions by statute, grounded upon considerations of public policy, and upon the circumstance of its being in fact better for the service, that the objects of those acts should be exempted, than that they should be subject to be pressed. *Cowper's Rep.* 519.

Thus by 13 *Geo.* 2. *c.* 17, every person of the age of 55 years or upwards, or under 18; and every foreigner being a mariner, seaman, or landman, who shall serve in any merchant ship, or other trading ship or vessel, or privateer belonging to the subjects of *Great Britain*; and every person of what age soever he be, for the full space of two years from the time of his first going to sea, and every person not having before used the sea, who shall bind himself apprentice to serve at sea, for three years from the time of his binding, shall be freed and exempted from being impressed, and the admiralty to grant protections to such persons accordingly.

Also by 19 *Geo.* 2. *c.* 30, mariners belonging to privateers, or trading ships employed in the British sugar colonies in the West Indies, are not to be impressed in such colonies, unless they shall have deserted from his majesty's ships; and the officer impressing is subject to a penalty of 50*l.* to the master or owner, to be recovered in any court of record within his majesty's dominions.

Likewise by divers statutes, certain mariners, harpooners, and others employed in the fisheries, are exempted from being impressed. It is also to be observed, that this power to impress is not to be wantonly exercised by the officer employed in the impress service, for an information has been granted against one who impressed the captain of a merchant ship to serve as a common seaman. 1 *Black. Rep.* 19.

So it seems that it would be an abuse of the power, to impress a bargeman of the Lord Mayor of London, or like person, while employed in the act of rowing. *Cowper's Rep.* 518.

Jurisdiction of courts martial.

No court martial shall punish or try any offence committed by any seamen in his majesty's service, which shall not be committed on the main sea, or in great rivers beneath the bridges, or in a haven or creek, within the jurisdiction of the admiralty; except in the case of spies, or of mutiny and desertion, or of disobedience, or of offences committed on land in foreign countries. 22 *Geo.* 2. *c.* 33. *s.* 40.

Privileged from arrest.

No person who shall list as a seaman on board any of the ships of his majesty, shall be liable to be taken out of the service by any process or execution, *other than for some criminal matters*; unless such process or execution be for a real debt, or other just cause of action, and unless, before the taking out of such process, the plaintiff, or some person on his behalf, make affidavit, that to his knowledge the sum owing, or debt, or damage and costs,

amounts to 20*l.* a memorandum of which oath shall be marked on the writ; and if any person be arrested contrary hereto, a judge of the court, upon complaint, may examine into the same by the oath of the parties or otherwise, and by warrant under his hand and seal discharge such seaman without fee, upon proof that he were belonging to one of the ships of his majesty, and arrested contrary to this act; and also award to the party complaining costs. 31 *Geo.* 2. *c.* 10. *s.* 28.

But the plaintiff may upon notice first given in writing of the cause of action, to such seaman, or left at his last place of residence, file a common appearance, so as to entitle him to proceed to judgment and outlawry, and to have execution thereupon other than against the body. *s.* 29.

*And in order to prevent the practice of obtaining the discharge of seamen by means of improperly suing out civil or criminal process,* IT IS ENACTED, by 44 *Geo.* 3. *c.* 13, THAT petty officers or seamen arrested by sheriffs or by other officers, shall be kept in custody, after being entitled to be discharged, and be conveyed to the commander in chief of his majesty's ships, or some commissioned officer, to serve on board his majesty's fleet, and the sheriff is to be allowed 2*s.* per mile for the conveyance of them. *s.* 1.

Making disturbances on pay days.

*As disturbances often happen in his majesty's yards and offices, and frequent disorders are occasioned about the office of the treasurer of the navy, on pay days, in* London, Portsmouth, *and other places, by the turbulency of seamen, and others,* it is enacted by 1 *Geo.* 1. *c.* 25, that the treasurer, comptroller, surveyor, clerk of the acts, and the commissioners of the navy, or one of them, may by warrants cause all such offenders to be brought before them, and examine and punish all whom, upon their enquiry and examination of witnesses, or confession of the parties, or on view in their presence, they shall find to have made any disturbances, and may punish the offenders either by fine or imprisonment, the fine not exceeding 20*s.* nor the imprisonment one week; and commit such persons to the next gaol, or the custody of the messengers attendant on them; and the said principal officers or commissioners may discharge such fine or imprisonment if they think fit; and for nonpayment of such fine, may send such offender to the next house of correction, to be kept to hard labour for two months; which fines shall be paid to the chest at *Chatham* for the use of the maimed seamen. *s.* 1.

Or (where greater punishments are needful) they may bind the persons offending to their good behaviour, and to answer the offences at the next assizes or quarter sessions; and in default of such security when required, may commit them to the county gaol, in order to their being prosecuted. *s.* 2.

But no person punished by this act shall be punished by any other law; and all convictions and judgments shall be final, and not subject to any appeal or *certiorari.* *s.* 13. 16.

May set up trades.

Seamen who have been employed in the king's service since the accession of king *George* the Second, 22 *Geo.* 2. *c.* 44; or since the twenty-second year of king *George* the Second, 3 *Geo.* 3. *c.* 8, or since the first day of *April* 1763, and have not deserted, or their wives or children may set up and exercise such trades as they are apt for in any town or place in *Great Britain*, except *Oxford* and *Cambridge*, without molestation; and if any person is sued thereupon, and the plaintiff is nonsuited, or the like, such person shall have double costs. 22 *Geo.* 2. *c.* 44. 3 *Geo.* 3. *c.* 8. 24 *Geo.* 3. *sess.* 2. *s.* 6.

Wages of seamen in THE MERCHANTS' SERVICE to be agreed for in writing before voyage.

By 2 *Geo.* 2. *c.* 36, *made perpetual by* 2 Geo. 3. *c.* 31, it shall not be lawful for any master of a ship *bound beyond the seas*, to carry any mariner, except his apprentices, from the port where he was shipped, to proceed on any voyage *beyond the seas*, without first coming to an agreement with such mariners for their wages, which agreement shall be made in writing, declaring what wages each seaman is to have for so long time as they shall ship themselves for, and also to express in the agreement the voyage for which such seaman was shipped; and if any such master shall carry out any mariner, except his apprentice, upon any voyage *beyond the seas*, without first entering into such agreement, and he and they signing the same, he shall forfeit 5*l.* for every such mariner, to the use of *Greenwich* hospital, *to be recovered on information on the oath of one witness, before one justice of peace*, who is required to issue his warrant to bring before him such master, and in case he refuses to pay the forfeiture, to grant his warrant to levy it by distress and sale of goods; and if no distress can be found, to commit him to the common gaol till he pay the same. *s.* 1.

And if any seaman ship himself on board any merchant vessel on an intended voyage *for parts beyond the seas*, he shall be obliged to sign such agreement within three days after he has entered himself, which agreement shall be conclusive to all parties for the time contracted for. *s.* 2.

Seamen in the merchant service deserting.

And if any seaman shall desert, or refuse to proceed on the voyage, or shall desert in parts beyond the seas, after he shall have signed such contract, he shall forfeit to the owners of such ship, the wages due to him at the time of his deserting, or refusing to proceed on the voyage. *s.* 3.

And if any such seaman shall desert, or absent himself from such ship, after he hath signed such contract, upon application made to any justice of peace, by the master or other person having charge of the ship, it shall be lawful for such justice to issue his warrant to apprehend such seaman; and if he shall refuse to proceed on the voyage, and shall not give a sufficient reason for such refusal, to the satisfaction of the justice, to commit him to the house of correction, to be kept to hard labour, not exceeding thirty days, nor less than fourteen. *s.* 4.

Also, if any seaman shall absent himself from the vessel to

which he belongs, without leave of the master or other chief officer having charge of such ship, he shall, for every day's absence, forfeit two days' pay to the use of *Greenwich* hospital. *s.* 5.

And if any seaman, not entering into the service of his majesty, shall leave the vessel to which he belongs, before he shall have a discharge in writing from the master or other person having the charge of such vessel, he shall forfeit one month's pay. *s.* 6.

When wages to be paid.

And on the arrival of any vessel in *Great Britain*, from parts *beyond the seas*, the masters shall pay the seamen their wages, if demanded, in thirty days after the vessel's being entered at the custom-house (except where a covenant shall be entered into to the contrary), or at the time the said seamen shall be discharged, which shall first happen, deducting out of the wages the penalties by this act imposed, under penalty of paying to such seamen that shall be unpaid 20*s.* over and above the wages, to be recovered as the wages may be recovered; and such payment of wages shall be good in law, notwithstanding any action, bill of sale, attachment or incumbrance whatsoever. *s.* 7.

Wages of seamen in THE COASTING TRADE, to be agreed for before the voyage.

Also, by 31 *Geo.* 3. *c.* 39, it shall not be lawful for the master of any vessel, of the burthen of 100 tons or upwards, *trading from and to any port in Great Britain*, to carry out to sea any mariner (except apprentices) without having before entered into an agreement in writing, to be signed as well by such master as by such seaman, for the wages during the voyage, or during the time he shall have entered for; which agreement is exempted from the stamp duties; and shall declare what wages each mariner is to have, and when payable, and for what time, or for what voyage such mariner shall have contracted; every such agreement to be in force at the time of proceeding to sea on any such voyage; and in case the master of *any vessel trading coastwise as aforesaid*, shall carry out to open sea any mariner (except his apprentices) without having first entered into such agreement, then being in full force, he shall forfeit 5*l.* for every such mariner, to the use of *Greenwich* hospital, *to be recovered upon information on the oath of one witness, before one justice of peace*, who is to issue his warrant to bring before him such master; and in case he refuses to pay the forfeiture, to grant his warrant to levy it by distress and sale; and in case no distress can be found, to commit the offender to the common gaol till he pay the same. *s.* 1. 10.

And every such mariner shall subscribe his signature or mark to such agreement, *at the time of his entering himself*, which agreement being also subscribed by the master, shall be conclusive and binding to all parties. *s.* 2.

Mariners in the coasting trade deserting.

And in case any such mariner, after he shall have entered into such agreement, shall neglect or refuse to proceed on the the voyage, he shall forfeit to the owners of the vessel all wages due at the time. *s.* 3.

And it shall be lawful, upon complaint made thereof, to *any justice of the peace*, by the master or commander, owner or own-

ers, or any other person having charge or command of the vessel, for such justice to issue his warrant to apprehend such mariner; and in case he shall refuse to proceed on the voyage, and shall not give a sufficient reason for such refusal, to the satisfaction of the justice, such justice shall commit him to the house of correction, there to be kept to hard labour for not exceeding thirty days, nor less than fourteen. 31 *Geo.* 3. *c.* 39. *s.* 3. 45 *Geo.* 3. *c.* 51.

And in case any mariner, after having entered into such agreement, shall wilfully absent himself from the vessel, before the voyage agreed upon, or upon which such ship shall have proceeded, shall be completed, and the cargo delivered, or before the time for which he shall have contracted shall be expired, such mariner shall, for every day he shall be absent, forfeit two days' pay to the use of *Greenwich* hospital; and in case he shall totally leave or quit the ship before such time as aforesaid, or before he shall have a discharge in writing from the master, he shall forfeit one month's wages to the use of *Greenwich* hospital. *s.* 4. 7.

But where the mariners of *any vessel trading coastwise*, shall contract for wages by the voyage, and not by the month, or other stated period of time, the penalties shall be ascertained in manner following, *viz.* if the whole voyage shall exceed one lunar month, the forfeiture of one month's pay shall be deemed a forfeiture of a sum of money in the same proportion to the whole wages, as a lunar month shall bear to the whole time of the voyage; and in like manner the forfeiture of two days pay shall be deemed a forfeiture of a sum in proportion to the whole wages, as two days shall bear to the whole time of the voyage; and if the whole voyage shall not exceed one lunar month, or two days, the forfeiture in either of the cases shall be deemed a forfeiture of the whole wages contracted for. *s.* 9.

When wages to be paid.

And the master of *any vessel trading coastwise* contracting as aforesaid, shall pay to every mariner their wages, if demanded, *within five days* after the vessel shall have entered at the custom-house or the cargo shall be delivered, or at the time the mariners shall be discharged, which shall first happen, unless an agreement shall have been made to the contrary, in which case the wages shall be paid in the terms of such agreement, after deducting the penalties, if any shall have been incurred, upon pain of forfeiting to each mariner 20*s.* over and above the wages due to him, to be recovered as the wages of any seamen are by law recoverable; and such payment shall be good, notwithstanding any action, bill of sale, attachment or incumbrance whatsoever. *s.* 5.

And it is enacted by both the foregoing acts, that no seaman, by signing such contract, shall be deprived of using any means for the recovery of wages, which he may now lawfully use,* and

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* Mariners may sue in the admiralty for their wages, although the

where it shall be necessary that the contract in writing should be produced in court, no obligation shall lie on any seaman to produce the same, but the master or owner of the ship; and no seaman shall fail in any action or process for reocvery of wages, for want of such contract being produced. 2 *Geo.* 2. *c.* 36. *s.* 8. 31 *Geo.* 3. *c.* 39. *s.* 6.

And the masters or owners of ships shall have power to deduct out of the wages of any seaman all penalties incurred by these acts, and to enter them in a book, and to make oath, if required, to the truth thereof; which book shall be signed by the master and two principal officers belonging to such ship [or if it is a coasting vessel, by the master, 31 *Geo.* 3. *c.* 39. *s.* 7.] setting forth, that the penalties contained in such book are the whole penalties stopt from any seaman; which penalties (except the forfeitures of wages to the owners, on the desertion of any seaman, or on refusing to proceed on the voyage) shall go to the use of *Greenwich* hospital, to be paid and accounted for by the masters to the officer at any port who collects the 6*d. per* month, which officer shall have power to administer an oath to every master touching the truth of such penalties. 2 *Geo.* 2. *c.* 36. *s.* 9. 31 *Geo.* 3. *c.* 39. *s.* 7.

And if any masters or owners of ships shall deduct out of the wages of any seamen, any of the penalties by the said acts directed to the use of *Greenwich* hospital, and shall not pay the money to some officer who collects the 6*d. per* month, in the port where the deduction shall be made, within three months after such deduction, they shall forfeit treble the value to the use of the hospital; which, together with the money deducted, shall be recovered by the same means as the penalties for not duly paying the 6*d. per* month. 2 *Geo.* 2. *c.* 36. *s.* 10. 31 *Geo.* 3. *c.* 39. *s.* 8.

Nothing in these acts shall debar any seaman from entering into the service of his majesty, nor shall such seaman for such entry forfeit the wages due to him during his service in such merchant ship, nor shall such entry be deemed a desertion. 2 *Geo.* 2. *c.* 36. *s.* 13. 31 *Geo.* 3. *c.* 39. *s.* 10.

One apprentice in the West-India trade to be indented for every 100 tons.

By 37 *Geo.* 3. *c.* 73, every master of a merchant ship trading to the *West Indies*, shall have on board, at clearing out from *Great Britain*, one apprentice, under 17 years indented for three years, for every 100 tons admeasurement of his ship,

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hiring was by the master on land; and this is allowed of in favour of navigation, for here they may all join in the same libel; also by the law of the admiralty they have remedy *against the ship and owners*, as well as against the master; and it would be a great discouragement to seamen to oblige them to bring separate actions, and those against a master who may happen to be insolvent. See *Bacon's Abr. tit. Merchant*, &c. (E).

according to the certificate of registry, and the indenture shall be enrolled at the custom-house of the port within a month after its execution; which apprentices shall be exempted from serving in his majesty's navy for three years; and every owner or master neglecting to enrol the same, shall forfeit 10l. one moiety by the owner, and the other by the master. *s.* 4.

Recovery and application of penalty.

And the same shall be applied, viz. one-third part towards the support of *Greenwich* hospital; one other third towards the support of the seamen's hospital at the port to which the ship belongs; but if there shall be no such hospital, then for the benefit of the old and disabled seamen of the port, and their families, to be distributed by the persons having the direction of the merchant seamen's fund there; or if there shall be no such establishment, *by the magistrates or overseers of the poor of the port*; and the other third to the informer. *s.* 9.

Justices of peace to have jurisdiction.

And such penalty may be recovered, upon information, on the oath of one witness, before one justice in any part of *Great Britain*, residing not more than ten miles from the abode of the person complained of, which justice shall issue his warrant to bring before him the offender; and if he shall neglect or refuse to pay the penalty, it may be levied by distress and sale of his goods; and if no distress can be found, he may be committed to the common gaol for three calendar months, or until he shall pay the same. *s.* 9.

Combinations among seamen and others.

By 33 *Geo.* 3. *c.* 67, if any seamen, keelmen, casters, ship carpenters, *or other persons*, riotously assembled together to the number of three or more, shall with force prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating of any ship, keel or vessel, or shall with force board the same, with intent to prevent, hinder or obstruct the loading or unloading, or the sailing or navigating thereof; every such person, being convicted upon any indictment found against him in any court of *oyer* and *terminer*, or *general or quarter sessions* for the county or district wherein the offence was committed, shall be committed either to the common gaol or to the house of correction, there to remain and be kept to hard labour for not exceeding twelve, nor less than six calendar months. *s.* 1.

Also if any seaman or seamen, keelman or keelmen, caster or casters, ship carpenter or ship carpenters, or other person or persons, shall with force prevent, hinder, or obstruct any other seaman, or person aforesaid, from working at, or employing himself in, or exercising his lawful trade, business, or occupation, or shall assault, beat, or wound, or use or commit any bodily violence or hurt to or upon such seaman or person aforesaid, with intent to deter, prevent, hinder or obstruct him from working at, employing himself in, or exercising his lawful trade, business, or occupation, every such offender, being thereof convicted upon any indictment found against him in any court of *oyer*

*and terminer, or general or quarter sessions* of the county or district, shall be committed either to the common gaol, or to the house of correction, there to remain and be kept to hard labour for not exceeding twelve, nor less than six calendar months. *s.* 2.

And if any such persons shall be convicted of any of the offences aforesaid, and shall afterwards *offend again in like manner*, such person so offending again, being thereof convicted upon any indictment, in any court of *oyer and terminer, or general or quarter sessions* of the county or district, shall, for such second, *and every* subsequent offence, be transported for not exceeding fourteen, nor less than seven years. *s.* 3.

But none of the pains, penalties, or punishments aforesaid shall extend to any act done in the service, or under the authority of his majesty. *s.* 4.

And if any seaman or seamen, keelman or keelmen, caster or casters, ship carpenter or ship carpenters, or other person or persons, shall wilfully and maliciously burn, or set fire to any ship, keel, or other vessel, such person convicted *in any court of oyer and terminer* for the county or district, shall be guilty of felony without benefit of clergy. *s.* 5.

And if any such person shall wilfully and maliciously destroy or damage the same, *otherwise than by fire*, every such offender being thereof convicted upon any indictment, in any court of *oyer* and *terminer, or generalor quarter sessions* as aforesaid, shall be guilty of felony, and transported for not exceeding fourteen, nor less than seven years. *s.* 6.

But if any of the offences aforesaid shall be committed on the high seas, then the same shall be triable in any session of *oyer* and *terminer, and goal delivery*, for the trial of offences committed on the high seas, within the jurisdiction of the admiralty. *s.* 7.

And no person shall be prosecuted for any of the offences aforesaid, unless such prosecution be commenced within twelve calendar months. *s.* 8.

' This act, which was originally only temporary, is now made ' perpetual by stat. 41 *Geo.* 3. *sess.* 2. *c.* 19.'

*For putting out poor boys apprentices to the sea service,* See APPRENTICES.

*For seamen passing under the testimonial of a justice of peace,* See VAGRANTS.

*For the punishment inflicted on seamen, for profane swearing,* See SWEARING.

*For the offences of personating seamen, or* Greenwich *pensioners, in order to receive their wages, and counterfeiting their wills and powers,* See Felony *(without clergy, s.* Forgeries).

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## SEARCH WARRANT.

General warrants illegal.

It seems to be agreed that *a general warrant to search all suspected places* is illegal on the very face of it, and ought not to be granted. 2 *Hale's Hist.* 113. 150. 2 *Hawk. c.* 13. *s.* 10. 17.

And it is laid down generally by my lord *Coke*, "that justices of peace have no power, *upon a bare surmise*, to break open any man's house to search for a felon, or stolen goods, either in the day or night." 4 *Inst.* 176.

But to this opinion, says *Hale*, I can by no means subscribe; it is preparatory to the discovery of felons, and preparing evidence against them, and to the helping persons robbed to their goods; and it is found to be of great use and necessity, and to disuse or discountenance it would be inconvenient to the public. 2 *Hale's Hist.* 149.

But warrants to search particular places may be granted on oath.

However, he saith it is fit that the following rules should be observed, in respect to the issuing of such warrants:

First; they are not to be granted without oath made before the justice of a felony committed, and that the party complaining hath probable cause to suspect they are in such house or place, and do shew his reasons of such suspicion; for these warrants are judicial acts, and must be granted upon examination of the fact. 2 *Hale's Hist.* 150.

This observed, the justice may issue his warrant *to search in such particular places*, whereof the party assigns probable cause of suspicion. 2 *Hale's Hist.* 150.

Search on bare suspicion to be in the day-time only.

Secondly; it is fit that such warrants to search do express that search be made *in the day-time*; for though it is not clear that they are unlawful without such restrictions, yet they are very inconvenient without it; for many times, under pretence of searches made in the night, robberies and burglaries have been committed, and at best it creates great disturbances. 2 *Hale's Hist.* 150.

Search on positive proof may be in the night.

But where the proof is *more than a probable suspicion*, and there is *positive proof*, it is right to execute the warrant in the night-time, lest the offenders and goods also be gone before morning. *Shaw's Just, tit. Sear. War.*

And agreeable to this doctrine in *Hale*, it is expressly enacted, by 22 *Geo.* 3. c. 58, *for the more easy discovery and effectual punishment of buyers and receivers of stolen goods*, that on complaint made on oath before one justice, that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house, out-house, garden, yard, croft, or other place, such justice may, by warrant under his hand and seal, cause such place to be searched *in the day time;* and the person knowingly concealing such stolen goods, or in whose custody the same shall be found, he being privy thereto, shall be deemed guilty of a misdemeanor, and may be brought before any justice, and made amenable to answer the same, by like warrant of such justice; and on conviction, may be punished by fine, imprisonment, or whipping, as the quarter sessions (who are empowered to try such offenders), or any other court before which he shall be tried, shall think fit to inflict. *s.* 1, 2.

Thirdly; they ought to be directed to constables and other public officers, whereof the law takes notice, and not to private persons, though it is fit the party complaining should be present and assistant, because he knows his goods. 2 *Hale's Hist.* 150. Warrant to be directed to the constable.

Fourthly; it ought to command that the goods found, together with the party in whose custody they are found, be brought before some justice of the peace, to the end that upon further examination of the fact the goods and party, in whose custody they are found, may be disposed as to law shall appertain. 2 *Hale's Hist.* 150. Form thereof.

Touching the execution of this warrant, *Hale* lays down the following particulars: Execution of the warrant.

First; whether the stolen goods are in the suspected house or not, the officer and his assistants in the day time may enter, the doors being open, to make search, and it is justifiable by this warrant. 2 *Hale's Hist.* 151.

Secondly; if the door be shut, and upon demand it be refused to be opened by them within, *if the stolen goods be in the house*, the officer may break open the door, and neither the officer nor the party that comes in his assistance are punishable for it, but may justify it upon the general issue, by the statute of 7 *Jac.* 1. c. 5.* for it is a process for the king, and includes a *non omittas*, and the very having of the goods carries a sufficient ground, *prima facie*, of suspicion, that he was the felon that stole them, and may be thereupon justifiably arrested. 2 *Hale's Hist.* 151.

Thirdly; *if the goods be not in the house*, yet it seems the officer is excused, that breaks open the door to search, because he searcheth by warrant, and could not know whether the goods were there till search made; but it seems the party that made the

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* See vol. i. p. 552.

suggestion is punishable in such case, for as to him the breaking of the door is *in eventu* lawful or unlawful, viz. lawful if the goods are there; unlawful if not there. 2 *Hale's Hist.* 151.

Return of the warrant.

Upon the return of this warrant executed, the justice before whom it is returned, hath these things to do. 2 *Hale's Hist.* 151.

First, as touching the goods brought before him, if it appear they were *not stolen*, they are to be restored to the possessor; if it appear they were *stolen*, they are not to be delivered to the proprietor, but deposited in the hands of the sheriff or constable, to the end the party robbed may proceed by indicting and convicting the offender, to have restitution*. 2 *Hale's Hist.* 151.

Secondly, as touching the party, that had the custody of the goods; if they were *not stolen*, then he is to be discharged: if *stolen*, but not by him, but by another, that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as a witness against him that sold them; if it appear he was knowing they were stolen, it is fit to bind him over to answer the felony †. 2 *Hale's Hist.* 151, 152.

For the authority to search for parochial books, see title *BOOKS* parochial.

Form of a complaint in order to obtain a search warrant.

Monmouthshire, to wit. } *Be it remembered that this* —— *day of* ——, *in the year of our Lord* ——, P R, *of* —— *in the county of* ——, *yeoman, in his proper person cometh before me* J P, *esq one of his majesty's justices of the peace in and for the said county, and upon oath maketh complaint, that on the* —— *day of* —— [*or within* —— *days*, as the case may be] *last past, divers goods and chattels of him the said* P R, *of the value of* ——, *that is to say* ——, *were feloniously stolen, taken and carried away from and out of the dwelling-house of him the said* P R, *situate at* —— *aforesaid, in the county aforesaid, by some person or persons unknown; and that he hath just and reasonable cause to suspect, and doth suspect that the said goods and chattels, or some part thereof, are concealed in the dwelling-house of* O O *of* —— *in the said county, labourer; for he the said* P R, *upon his oath aforesaid, doth depose and say, that* [here set forth the grounds

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* For the manner of obtaining restitution of stolen goods upon the conviction of offenders, see title FELONY, Sec. VIII.

† For the law relating to the buyers and receivers of stolen goods, see vol. ii. p. 343.

of suspicion that the same may appear to be reasonable] *and thereupon he the said* P R *prayeth that justice may be done in the premises.*

Before me
J P.

P R.

Form of a search warrant on the above complaint.

Monmouthshire, } To the constable of ——

*Whereas* P R, *of* ——, *in the said county of* M, *yeoman, hath this day made complaint upon oath before me* J P, *esq. one of his majesty's justices of the peace in and for the said county, that within* —— *days last past, certain goods and chattels of him the said* P R, *to wit,* —— *have by some person or persons unknown been feloniously taken, stolen, and carried away out of the dwelling house of him the said* P R, *at* —— *aforesaid, in the county aforesaid; and that he the said* P R *hath probable cause to suspect, and doth suspect that the said goods and chattels, or some part thereof, are concealed in the dwelling house of* O O *of* ——, *in the said county, labourer: These are therefore in his majesty's name to authorize and require you with necessary and proper assistants to enter in the day time into the said dwelling-house of the said* O O, *at* ——*aforesaid, in the county aforesaid, and there diligently to search for the said goods; and if the same, or any part thereof, shall be found upon such search, you are to bring the goods so found, and also the body of the said* O O, *before me, or some other of the justices of our lord the king, assigned to keep the peace in and for the county aforesaid, to be disposed of, and further dealt with according to law. Given under my hand and seal, at* ——, *in the said county, the* —— *day of* ——, *in the year of our Lord*——

J P.

*Se defendendo.* See HOMICIDE.

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# SEDITIOUS PRACTICES.

ALL contempts against the king's person or government are very highly criminal, and punishable with fine and imprisonment, and sometimes with the pillory, by the discretion of the judges, upon consideration of all the circumstances of the case; but in- CONTEMPTS AGAINST THE KING OR HIS GOVERNMENT.

asmuch as it is generally obvious to common sense, in what cases and to what degree a man is guilty of this offence, and it would be endless to enumerate all the particulars, it will be sufficient only to notice some of the most general heads. 1 *Hawk. c.* 23.

1. The charging the government with oppression, or weak administration. 1 *Hawk. c.* 23. *s.* 1.

2. The doing an act, which impliedly encourages rebellion, as by drinking to the pious memory of a person executed for high treason*, or absolving persons at the gallows, who being condemned for high treason, shew no sign of repentance, but persist in justifying the fact. 1 *Hawk. c.* 23. *s.* 2.

3. Endeavouring to frighten the king into a change of his measures, with threats of the uneasiness of his subjects, as by subscribing a petition to him, in which it is intimated, that if it be denied, many thousands will be discontented. 1 *Hawk. c.* 23. *s.* 3.

4. Spreading false rumours concerning the king's intention, as that he designs to grant a toleration to papists, or the like. 1 *Hawk. c.* 23. *s.* 4.

5. Charging him with a breach of his coronation oath. 1 *Hawk. c.* 23. *s.* 5.

6. Speaking contemptuously of him, as by cursing him or the like; or giving out that he wants wisdom, valour, or steadiness; or *in general* doing any thing which may lessen him in the esteem of his subjects, and weaken his government, or raise jealousies between him and his people. 1 *Hawk. c.* 23. *s.* 6.

Indictment for speaking seditious words against the King.

Middlesex. { *The jurors, &c. that* A B, *of* &c. *being a pernicious and seditious man, and contriving and intending the liege subjects of our said lord the king to incite and move to hatred and dislike of the person of our said lord the king, and the government established within this realm, on the tenth day of* January, *in the* —— *year of the reign of our sovereign lord* George *the third, now king of the united kingdom of* Great Britain, *&c. at the parish aforesaid, in the county aforesaid in the presence and hearing of divers liege subjects of our said lord the king, with whom the said* A B *then and there was talking of and concerning our said lord the king, unlawfully, maliciously, and wickedly did publish, utter and declare with a loud voice these* English *words following* (to wit) *he* (*meaning our said lord the king*) *is a* ———— *and a* ——, *to the great scandal and contempt of our said lord the king, and his laws, to the evil and*

* And much more by drinking success to the arms of the king's enemies.

*pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.*

7. Seditious words in derogation of the established religion are also indictable, as tending to a breach of the peace. 1 *Hawk. c. 5. s. 6.*

Also, if a man in maintenance of heretical errors, set up conventicles, and raise factions, which may tend to the disturbance of the public peace, it seemeth that he may in this respect be fined and imprisoned, upon an indictment at the common law. 1 *Hawk. c. 2. s. 6.*

And by 38 *Geo. 3. c.* 78, If any person shall print or publish in any newspaper in *England*, any matter or thing having a tendency to excite hatred and contempt of the person of his majesty and of the constitution and government established in these kingdoms, as having been previously printed or published in some foreign paper, not previously so printed or published; such person shall, being convicted thereof, be committed to prison for not exceeding twelve nor less than six months, and shall be liable to other punishment as in cases of high misdemeanors; and it shall be incumbent upon the person against whom the proceedings shall be, to make proof that the same had been previously printed and published in some foreign paper, or the same shall be deemed not to have been so previously printed and published. *s.* 24.

8. And if such proof shall be made, the publication shall nevertheless be deemed to be of such nature in the law as the same would have been if this act had not been made. *s.* 25.

Also SPREADING FALSE NEWS to make discord between the king and nobility, or concerning any great man of the realm, is punishable by the common law with fine and imprisonment. 4 *Black. Com.* 149. SPREADING FALSE NEWS.

And by 2 *Ric.* 2. *st.* 1. *c.* 5, it is enacted, "that of counter-"feiters of false news, and horrible lies of prelates, dukes, earls, "barons, and other nobles and great men of the realm, and also "of the chancellor, treasurer, clerk of the privy seal, steward of "the king's house, justices of the one bench, or of the other, and "other great officers of the realm, it is defended that none con-"trive or tell any false things of prelates, lords, and of others "aforesaid, whereof discord or slander might arise within the "realm; and he who doth the same shall be imprisoned "till he have brought him forth that did speak the same."

And FALSE AND PRETENDED PROPHECIES, with intent to disturb the peace, are equally unlawful, and more penal, as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears. 1 *Black. Com.* 149. PRETENDED PROPHECIES.

Such false and pretended prophecies were punished capitally

by stat. 1 *Ed. 6. c.* 12, which was repealed in the reign of queen *Mary*. *Ibid.*

And now by 5 *Eliz. c.* 15, if any person do advisedly and directly publish by writing, printing, singing, or any other open speech or deed, any fond, fantastical, or false prophecy, upon any arms, fields, beasts, badges, or such things accustomed in arms, cognizances, or signets, or upon any time, year, or day, name bloodshed or war, *to the intent to make any rebellion, insurrection, dissention, loss of life, or disturbance within the queen's dominions,* every such person being convicted shall suffer imprisonment one year, and forfeit 10*l.* *s.* 2.

And if any such offender do after such conviction offend in the premises and be convicted, he shall for his second offence suffer imprisonment during life, and forfeit all his goods real and personals; the moieties of every which forfeitures shall be to the queen, and the other moiety to him that will sue for the same in any of the queen's courts of record. *s.* 3.

And every justice of assize, justice of *Oyer* and *Terminer*, and justice of peace, shall have power to inquire, hear, and determine, all offences abovesaid. *s.* 4.

Provided that no person be impeached for any offence contrary to this act, unless he be accused within six months ensuing such offence committed. *s.* 5.

ADMINISTERING UNLAWFUL OATHS.

By 37 *Geo.* 3. *c.* 123, any person who shall, in any manner or form whatsoever, administer, or cause to be administered, or be aiding or assisting at, or present at, and consenting to, the administering or taking of any oath or engagement, purporting or intended to bind the person taking the same to engage in any mutinous or seditious purpose; 'or to disturb the public peace; 'or to be of any association, or confederacy, formed for any 'such purpose; or to obey the orders or commands of any com'mittee or body of men not lawfully constituted, or of any leader 'or commander, or other person not having authority by law 'for that purpose; or not to inform or give evidence against any 'associate, confederate, or other person; or not to reveal or 'discover any unlawful combination or confederacy; or not to 'reveal or discover any illegal act done or to be done; or not to 'reveal or discover any illegal oath or engagement, which may 'have been administered or tendered to, or taken by such person 'or to or by any other person, or the import of any such oath or 'engagement;' shall, on conviction, be adjudged guilty of felony, and may be transported for not exceeding seven years; and every person who shall take any such oath or engagement, not being compelled thereto, shall on conviction, be adjudged guilty of felony, and may be transported for not exceeding seven years; and although the oath be taken to support a particular brotherhood or society, and may not on the face of it purport to be of a seditious tendency; yet parol evidence may be given to shew that the

brotherhood or society therein referred to is or was a seditious society. *K.* v. *Moors*, 6 *East's Rep.* 419.

And compulsion shall not excuse any person taking such oath, unless he shall, within four days after, if not prevented by actual force or sickness, and then within four days after the hindrance shall cease, declare the same, together with the whole of what he shall know touching the same, and the person by whom, and in whose presence, and when and where, such oath was administered, by information on oath before one justice, or one of the principal secretaries of state, or his majesty's privy council; or, in case the person taking such oath shall be in actual service in his majesty's forces by sea or land, then by such information on oath as aforesaid, or by information to his commanding officer. *s.* 2. Compulsion no excuse.

Persons aiding and assisting at, or present at and consenting to, the administering or taking of any such oath or engagement, and persons causing any such oath or engagement to be administered or taken, though not present at the administering or taking thereof, shall be deemed principal offenders, and tried as such, although the persons who actually administered such oath or engagement shall not have been tried or convicted. *s.* 3. Accessaries therein.

It shall not be necessary, in any indictment to set forth the words of such oath or engagement; and it shall be sufficient to set forth the purport, or some material part thereof. *s.* 4. Indictment.

Any engagement or obligation whatsoever, in the nature of an oath, shall be deemed an oath, in whatever manner the same shall be administered or taken; and whether the same shall be actually administered by any person to any other, or taken by any person without any administration thereof by any other person. *s.* 5. What shall be deemed an oath.

Any offence against this act on the high seas, or out of this realm, or within *England*, may be tried before any court of oyer and terminer or goal delivery, for any county in *England*, as if therein committed; and if committed in *Scotland*, either before the justiciary court at *Edinburgh*, or in any of the circuit courts, *s.* 6. Offences on the high seas.

But any person tried, and acquitted or convicted of any offence against this act, shall not be liable to be tried again for the same offence, as high treason, or misprision of high treason; and nothing in this act shall extend to prevent any person guilty of any offence against this act, from being tried for high treason, or misprision of treason, as if this act had not been made. *s.* 7.

And by 37 *Geo.* 3. *c.* 70, any person who shall maliciously and advisedly endeavour to seduce any person serving in his majesty's forces, from his duty and allegiance to his majesty, or to incite or stir up any such person to mutiny, or to make, or endeavour to make, any traitorous or mutinous practice, shall suffer death without benefit of clergy. *s.* 1. Endeavouring to seduce the forces, felony without clergy.

Any offence against this act, whether committed on the high seas or within *England*, may be prosecuted before any court of oyer and terminer or goal-delivery for any county in *England*. *s.* 2. Where offences to be tried.

Offenders not to be tried twice for the same offence.

Any person tried, and acquitted or convicted of any offence against this act, shall not be liable to be tried again for the same offence, as high treason, or misprision of high treason; but any person guilty of such offence, and who shall not be tried for the same as an offence against this act, may be tried for the same as high treason or misprision of high treason. *s.* 3.

Seditious societies suppressed.

Also by 39 *Geo.* 3. *c.* 79, the societies of united *Englishmen*, united *Scotsmen*, united *Irishmen*, and united *Britons*, and the society commonly called the *London* corresponding society, and all other societies called corresponding societies of any other city, town, or place, shall be suppressed and prohibited, as unlawful combinations and confederacies against the government, and against the peace. *s.* 1.

What societies deemed unlawful.

All the said societies, and also every other society now established, or hereafter to be established, the members whereof shall be required or admitted to take any oath or engagement, which shall be an unlawful oath or engagement within the meaning of the last act; and every society, the members whereof, or any of them, shall take, or in any manner bind themselves by such oath or engagement, on becoming or in consequence of being members of such society; and every society, the members whereof shall take, subscribe, or assent, to any test or declaration not required by law, or not authorized in manner herein after mentioned; and every society, of which the names of the members, or any of them, shall be kept secret from the society at large, or which shall have any committee or select body so chosen that the members constituting the same shall not be known by the society at large, or which shall have any president, treasurer, secretary, delegate, or other officer so chosen that the appointment of such persons shall not be known to the society at large, or of which the names of all the members, and of all committees, or select bodies of members, and of all presidents, treasurers, secretaries, delegates, and other officers, shall not be entered in a book to be kept for that purpose, and to be open to the inspection of all the members; and every society which shall be composed of different divisions, or of different parts, acting in any manner separately from each other, or of which any part shall have any president, secretary, treasurer, delegate, or other officer; shall be deemed to be unlawful combinations and confederacies; and every person who shall become a member, or who now being a member, shall afterwards act as a member; and every person who shall, directly or indirectly, maintain correspondence or intercourse with any such society, or with any division, branch, committee, or other select body, president, treasurer, secretary, delegate, or other officer, or member thereof as such; or who shall, by contribution of money, or otherwise, aid or support such society, or any members or officers thereof; shall be guilty of an unlawful combination and confederacy. *s.* 2.

But nothing herein shall extend to any declaration taken, subscribed, or assented to by the members of any society, in case the form shall have been first approved and subscribed by two justices of the peace, and shall have been registered with the clerk of the peace, for which there shall be paid a fee of 1*s.* but such approbation of the justices shall remain valid no longer than until the next general session, unless the same shall, on application made by the parties concerned, be confirmed by such general session; and if the same shall not be so confirmed, the provisions of this act shall extend to such declaration, and to all societies or persons subscribing the same, subsequent to such general session. *s.* 3. Exemption.

And nothing in this act shall extend to any lodges of free masons, which shall, before the passing of this bill, have been usually holden under the rules prevailing among free masons. *s.* 5. Freemasons.

But this exemption shall not extend to any such society, unless two of the members shall certify, upon oath (before any justice of the peace, or other magistrate), that such society has, before the passing of this act, been usually held under the denomination of a lodge of free masons, and in conformity to the rules prevailing among free masons; which certificate, attested by the magistrate, and subscribed by the person certifying, shall, within two calendar months after the passing of this act, be deposited with the clerk of the peace; also this exemption shall not extend to any such lodge, unless the name thereof, and the usual place and times of its meetings, and the names of all the members thereof, be registered with such clerk of the peace, within two months after the passing of this act, and also on or before the 25th of *March*, in every succeeding year. *s.* 6.

The clerk of the peace is to receive such certificate, and make such registry as aforesaid, and to enrol the same among the records, and to lay the same, once in every year, before the general session; and it shall be lawful for the justices, at any general sessions, upon complaint, upon oath, by one or more persons, that the continuance of the meetings of any such lodge is likely to be injurious to the public peace and good order, to direct that the meetings of such society shall from thenceforth be discontinued; and any such meeting held afterwards, shall be deemed an unlawful combination and confederacy. *s.* 7. How lodges may be suppressed.

Every person who shall be guilty of any such unlawful combination and confederacy, may be proceeded against in a summary way, (II) either before one justice of the peace, or by Offenders, how to be prosecuted.

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(II) Form of a conviction of an unlawful combination and confederacy, prescribed by sec. 28 of the act.

Monmouthshire, to wit. } *BE it remembered, that on this ——— day of ——— in the ——— year of the*

indictment; and every person convicted, on the oath of one witness, by such justice, shall be by him committed to the common gaol, or house of correction, for three calendar months, or shall be by such justice adjudged to forfeit 20*l.* as to such justice shall seem meet; and in case such sum shall not be forthwith paid into the hands of such justice, he shall, by warrant, cause the same to be levied by distress and sale, together with all costs and charges attending such distress and sale, and for want of sufficient distress, shall commit such offender to the common gaol, or house of correction, for not exceeding three calendar months; and every person convicted upon indictment, shall be transported for seven years, or imprisoned for not exceeding two years, as the court shall think fit; and every offender ordered to be transported, shall be subject to all laws concerning offenders ordered to be transported. *s.* 8.

But it shall be lawful for the justice by whom any person shall be convicted (if he shall see cause) to mitigate the punishment before directed, so as such punishment be not reduced to less than one third, whether such punishment shall be by imprisonment or fine. *s.* 9.

Also any person who shall be prosecuted before any justice in a summary way, and convicted or acquitted, shall not afterwards be prosecuted by indictment for the same offence; and so in like manner any person convicted or acquitted upon any indictment shall not afterwards be prosecuted before any justice of the peace. *s.* 10.

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*reign of* —— A O *of* —— *is duly convicted before me,* [or *us*] —— *of his majesty's justices of the peace for* —— *in pursuance of an act of the* 39*th year of the reign of king* George *the third,* [intituled 'an act for the more effectual suppression of societies established for seditious and treasonable practices, and for better preventing treasonable and seditious practices'], *for that he the said* A O, *after the passing of the said act, to wit, on the* —— *day of* —— *at* —— *did, contrary to the said act, become a member of* [or as the case may be, *act as a member of,* or *maintain correspondence* or *intercourse with,* or *by contribution of money or otherwise abet or support*] *a society* [describing the society], *which society is an unlawful combination and confederacy within the intent and meaning of the said act: Wherefore I* [or *we*] *the said* —— *do adjudge, that he the said* A O *do pay,* [or *be imprisoned*] *as a penalty for his offence, in pursuance of the said act. Given under my* [or *our*] *hands and seals, this* —— *day of* —— *in the year of our Lord* —— *and in the* —— *year of the reign of his majesty king* ——.

Also, nothing in this act shall extend to prevent any prosecution by indictment, or otherwise, for any offence within the meaning of this act, which might have been so prosecuted if this act had not been made, unless the offender shall have been prosecuted under this act, and convicted or acquitted; save only that no person shall be prosecuted for any act, before the passing of this act. *s.* 11.

Persons permitting seditious meetings in their houses.

And if any person shall knowingly permit any meeting of any society aforesaid, or of any division, branch, or committee of such society, to be held in his house or apartment, such person shall, for the first offence, forfeit 5*l.* and for any offence after conviction for such first offence, be guilty of an unlawful combination and confederacy. *s.* 13.

Power of justices to search such houses.

It shall be lawful for two justices of the peace, upon oath that any meeting of any society, hereby declared to be an unlawful combination and confederacy, or any meeting for any seditious purpose, hath been held at any house, room, or place, licensed for the sale of ale, beer, wine, or spirituous liquors, to adjudge the licence to have been forfeited; and the person keeping such place, shall, from and after such adjudication, be subject to the penalties for any act done after that day, which such person would be subject to, if such licence had expired on that day. *s.* 14.

Debating societies and lecture rooms regulated.

Every house, room, field, or other place, at or in which any lecture or discourse shall be publicly delivered, or any public debate shall be had on any subject whatever, for the purpose of raising money or any other valuable thing, from the persons admitted, or to which any person shall be admitted by payment of money, or by any ticket or token delivered in consideration of money, or any other valuable thing, or in consequence of paying or giving, or having paid or given, or having agreed to pay or give any money or other valuable thing, or where any money, or other valuable thing, shall be received from any person, admitted either under pretence of paying for any refreshment, or other thing, or under any other pretence, or for any other cause or by means of any device whatever;—and every house, room, or place, which shall be opened or used as a place of meeting, for the purposes of reading books, pamphlets, newspapers, or other publications, and to which any person shall be admitted by payment of money, &c. [*as before*] shall be deemed a disorderly house or place, within the meaning of the 36 *Geo.* 3. *c.* 8*. for the more effectually pre-

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* This act of 36 *Geo.* 3. *c.* 8, which was passed to prevent the meeting of more than 50 persons under the pretext of preparing petitions for the alteration of matters established in church or state, except in county meetings, and according to the regulations of such act, was to continue for three years from 18 *Dec.* 1795, and from thence to the end of the then next session only, consequently the provisions thereof are now expired.

venting seditious meetings and assemblies, unless the same shall have been previously licensed in manner herein-after mentioned. *s.* 15.

And the person by whom such place shall be opened or used for any of the purposes aforesaid, shall forfeit 100*l.* for every day or time that such place shall be opened or used, to such person as will sue for the same, and be otherwise punished as in cases of disorderly houses; and every person managing or conducting the proceedings, or acting as moderator, president, or chairman, at such place so opened or used as aforesaid, or therein debating, or delivering any discourse or lecture, or furnishing or delivering any book, pamphlet, newspaper, or other publication, as aforesaid; and also every person who shall pay, give, collect, or receive, or agree to pay, give, collect, or receive any money, or any thing, for the admission of any person, or shall deliver out, distribute, or receive any such ticket or token as aforesaid, knowing such place to be opened or used for any such purpose as aforesaid, shall forfeit 20*l.* *s.* 15.

Master of the house liable.

Any person who shall appear, act, or behave as master or mistress, or as the person having the command, government or management of any such place, shall be deemed to be a person by whom the same is opened or used, and shall be liable to be prosecuted, and punished as such, notwithstanding he be not in fact the real owner or occupier. *s.* 16.

Justices may demand admittance.

It shall be lawful for any justice of the peace, who shall, by information upon oath, have reason to suspect that any house, room, field, place, or any part thereof, is opened or used for the purpose of delivering lectures or discourses, or for public debate, or for the purpose of reading books, pamphlets, newspapers, or other publications, contrary to this act, to go to such place, and demand to be admitted therein; and in case such justice shall be refused, the same shall be deemed a disorderly house or place within the meaning of this act, and the provisions herein-before contained shall be applied to such place; and every person refusing such admittance shall forfeit 20*l.* *s.* 17.

How debating societies or lecture rooms may be licensed.

But it shall be lawful for two justices, by writing under their hands and seals, at their general sessions, or at any special session to be held for the particular purpose, to grant a licence to any person, desiring the same, to open any house, room, or other building for the purpose of delivering for money any such lectures or discourses as aforesaid, on any subjects; the same being clearly expressed in such licence, or for the purpose of reading books, pamphlets, newspapers, or other publications; for which licence a fee of 1*s.* shall be paid; and the same shall be in force for one year, or for any less space of time, therein specified; and which licence the justices

at any general sessions, may revoke by any order of such justices, a copy whereof shall be delivered to, or served upon, the person to whom the said licence shall have been granted, or shall be left at the house, room, or building, for which such licence shall have been granted, and thereupon such licence shall cease. *s.* 18.

Justices may enter licensed places.

But it shall be lawful for any justice of the peace, where any such house, room, or building, shall be licensed, to go at the time of delivering any lecture or discourse, or at the time appointed for delivering the same, or while such house, room, or building shall be opened, or during the time appointed for using the same as a place for reading books, pamphlets, newspapers, or other publications, and demand to be admitted therein; and in case such justice shall be refused admittance, the same shall be deemed, notwithstanding any licence, a disorderly house or place; and the provisions before contained applied, and every person refusing such admittance shall forfeit 20*l.* *s.* 19.

Alehouse licence to be forfeited, if house used as a debating or lecture room.

Also it shall be lawful for any two justices, upon evidence, on oath, that any place so licensed, is commonly used for the purpose of delivering lectures or discourses of a seditious or immoral tendency, or that books, pamphlets, newspapers, or other publications of a seditious or immoral nature, are there kept and delivered to be read, to adjudge the licence forfeited, and such licence shall thereupon cease, and be utterly void. *s.* 20.

Every alehouse to be deemed licensed for reading.

Every house, room, or place, licensed for the sale of ale, beer, wine, or spirituous liquors, shall also be deemed a place licensed for the purpose of reading books, pamphlets, and other publications, within this act. *s.* 21.

But it shall be lawful for two justices, upon evidence on oath, that books, pamphlets, or other publications of a seditious or immoral nature, are usually distributed for the purpose of being read at such place, to adjudge (III) the licence for selling ale, under the authority whereof such place shall be used

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(III) Form of adjudication of forfeiture of licence to sell ale, prescribed by sec. 28 of the act.

Westmoreland, to wit. } *BE it remembered, that on this* ——— *day of* ——— *in the* ——— *year of the reign of his present majesty,* A O *of* ———, *being a person licensed to sell* [as the case may be], *is duly convicted before us, two of his majesty's justices of the peace for the county of* ——— *in pursuance of an act of the 39th year of the reign of* ——— [set forth the title of the act], *for*

for the purpose of selling ale, to have been forfeited, and the person so keeping such place, shall, from and after such adjudication, be subject to all the penalties which such person would be liable to, if such licence had expired on that day, for any act done after that day. *s.* 21.

Not to extend to the universities, inns of court, Gresham college, or schoolmasters.

Nothing in this act shall extend to any lecture or discourse in any of the universities, by any member thereof, or any person authorized by the chancellor, vice chancellor, or other officers of such universities, or to any lecture or discourse delivered in the public hall of any of the inns of court or chancery, by any person authorized by the benchers, or by the professors in *Gresham* college; and no payment made to any schoolmaster, or other person allowed to instruct youth, in respect of any lectures or discourses, delivered by such schoolmaster, shall be deemed a payment for admission to such lectures or discourses, within this act. *s.* 22.

Printers to give notice to the clerk of the peace.

'And whereas the societies aforesaid and many others have 'caused to be published in great quantities, divers printed pa-'pers of an irreligious, treasonable and seditious nature, tending 'to revile religion, and excite hatred and contempt of his ma-'jesty's person, government and laws, and it is highly impor-'tant that it should be known by whom such papers are print-'ed,' it is enacted, that every person having any printing press, or types for printing, shall cause a notice thereof, signed in the presence of, and attested by, one witness, to be delivered to the clerk of the peace, or his deputy, according to the form in the schedule; and such clerk of the peace shall grant a certificate in the form prescribed in the schedule, for which he shall receive 1*s.* and such clerk of the peace shall file such notice, and transmit an attested copy thereof to one of the secretaries of state; and every person who, not having delivered such notice, and obtained such certificate, shall, from and after the expiration of forty days next after the passing of this act, keep or use any printing press, or types for printing, or having delivered such notice, and obtained such certificate, shall use any

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*that he the said* A O *on* —— *at* —— *did permit a meeting of a society* [describe the society], *which is an unlawful combination and confederacy within the intent and meaning of the said act, to be held at* —— *being the house* [as the case may be] *of the said* A O *wherein the said* A O *is licensed to sell* [as the case may be]: *Wherefore we the said* —— *do adjudge and declare, that the licence* [*or licences,* as the case may be] *is* [or *are*] *for such offence forfeited.*

*Given under our hands and seals this* —— *day of* —— *in the year of our lord* —— *and in the* —— *year of the reign of his majesty king* ——

printing press, or types for printing, in any other place than the place expressed in such notice, shall forfeit 20*l*. *s*. 23.

But nothing herein shall extend to his majesty's printers for *England* and *Scotland*, or to the public presses belonging to the universities of *Oxford* and *Cambridge*. *s*. 24.

And every person carrying on the business of a letter founder or maker or seller of types for printing, or of printing presses, shall cause notice of his intention to carry on such business to be delivered to the clerk of the peace, or his deputy, in the form in the schedule (IV); and such clerk of the peace, or deputy, shall grant a certificate (V), in the form prescribed in the said schedule, for which he shall receive 1*s*. and shall file such notice, and transmit an attested copy thereof to one of the secretaries of state; and every person who shall, after the expiration of the said forty days, carry on such business, or make or sell any types for printing, or printing press, without having given such notice, and obtained such certificate shall forfeit 20*l*. *s*. 25.

Letter founders are to give like notice,

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(IV) Form of notice to the clerk of the peace, that any person keeps any printing press, or types for printing, prescribed by sec. 28 of the act.

*To the clerk of the peace for* ——— [here insert the county or place] *or his deputy*.

*I* A P *of* ——— *do hereby declare, that I have a printing press and types for printing, which I propose to use for printing, within* ——— [as the case may require], *and which I require to be entered for that purpose, in pursuance of an act passed in the 39th year of the reign of his majesty king* George *the third*, [set forth the title of the act]. *Witness my hand, this* ——— *day of* ———

Signed in the presence of
A W.

(V.) Form of a certificate that notice has been given of a printing press, or types for printing, prescribed by sec. 28 of the act.

*I*, ——— *clerk* [*or deputy clerk*] *of the peace for* ——— *do hereby certify, that* A P *of* ——— *hath delivered to me a notice in writing, appearing to be signed by him, and attested by* A W *as a witness to his signing the same, that he the said* A P *hath a printing press and types for printing, which he proposes to use for printing, within* ——— *and which he has required to be entered, pursuant to an act passed in the 39th year of his majesty's reign*, [set forth the title of the act.] *Witness my hand, this* ——— *day of* ———

An account of types and presses sold to be kept.

Every person who shall sell types for printing, or printing presses, shall keep a fair account in writing, of all persons to whom any such types or presses shall be sold, and shall produce such accounts to any justice of the peace who shall require the same; and if he shall neglect to keep such account, or refuse to produce the same to any justice, on demand in writing, such person shall forfeit 20*l*. *s*. 26.

The names and place of abode of the printer, to be printed on every paper and book.

And every person who shall print any paper, or book, whatsoever, intended to be published or dispersed, whether sold or given away, shall print upon the front of every such paper, if printed on one side only, and upon the first and last leaves of every paper or book which shall consist of more than one leaf, in legible characters, his name, and the name of the city, town, parish, or place; and also the name (if any) of the square, street, lane, court or place in which his dwelling house, or usual place of abode shall be; and in default shall, for every copy of such paper so published or dispersed, forfeit 20*l*. and also every person assisting therein, shall forfeit the like penalty*. *s*. 27.

Papers printed by the authority of parliament excepted.

Provided that nothing herein shall extend to any papers printed by the authority, and for the use of either house of parliament. *s*. 28.

Or under the authority of the head officers of any of the principal offices of state, or of any board of revenue, or the army or navy. 41 *Geo*. 3. *c*. 80. *s*. 1.

Printers to keep copies of what they print, and to print thereon the name and abode of his employer.

And every person who shall print any paper for hire or profit, shall keep one copy thereof at least, on which he shall write or print the name and place of abode of the person by whom he is employed, and shall keep the same for six calendar months next after the printing thereof, which he shall produce to any justice who, within that time, shall require to see the same; on pain of forfeiting for every such neglect, 20*l*. 39 *Geo*. 3. *c*. 79. *s*. 29.

Persons selling printed papers without the name and abode of the printer, to be taken before a justice.

And any person to whom, or in whose presence, any printed paper not having the name and place of abode of any person printed thereon in manner aforesaid, or having a fictitious or false name or place of abode printed thereon, shall be sold, or offered for sale, or given *gratis*, or offered so to be; or shall

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* A common informer cannot sue in the courts at *Westminster* to recover this penalty of 20*l*. for omitting the printer's name and abode: for a common informer can have no right to sue for any penalty, but where power is given to him for that purpose by the statute; and here the 35th section of this statute only says, that a common informer may sue in any court of record for any pecuniary penalty *exceeding* 20*l*. the penalty given for this offence, each of which must be reckoned accumulatively, does not exceed 20*l*. and therefore it is not within the provisions of the act. *Fleming* q. t. v. *Bailey*, *Tr*. 44 *Geo*. 3. 5 *East's Rep*. 813.

be pasted, fixed, or left in any public place, or in any other manner exposed to public view, may take and convey such offender before a justice, or may deliver him to a constable or other peace officer to be carried before a justice, to the intent that he may hear and determine whether such person hath been guilty of any offence against this act. *s.* 30.

Provided that nothing herein shall extend to any engraving, or to the printing by letter press of the name, or the name and address, business or profession of any person, and the articles in which he deals; or to any papers for the sale of estates or goods by auction or otherwise: nor to alter any rule, regulation, or provision in any act of parliament respecting the printing, publishing, or distributing any newspaper or other printed paper. *s.* 31, 32.

Not to extend to engravings, newspapers, or printing names and addresses, &c.

And if any justice shall, from information on oath, have reason to suspect that any printing press, or types for printing, are used or kept for use, without notice given, and certificate obtained as hereby required, or in any place not included in such notice and certificate, he may, by warrant, empower any constable in the day time, with such persons as shall be called to his assistance, to search any house, room, or place, and to seize and carry away every printing press found therein, together with all the types and other articles thereto belonging and used in printing, and all printed paper there found. *s.* 33.

Suspected places may be searched for presses and types.

But no person shall be prosecuted or sued for any penalty hereby imposed, unless such prosecution be commenced, or action brought within three calendar months. *s.* 34.

Prosecutions to be within three months.

And all pecuniary penalties hereby imposed, exceeding 20*l.* are to be recovered in the courts at *Westminster*. *s.* 35.

Penalties, how to be recovered.

And all penalties not exceeding 20*l.* (for the recovery whereof no provision is hereinbefore contained) may be recovered before one justice, where such penalty shall be incurred, or the person having incurred the same shall happen to be, in a summary way (VI). And in case such last mentioned penalty shall

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(VI) General form of a conviction, prescribed by sec. 28 of the act.

Monmouthshire, to wit. } *BE it remembered that on this* —— *day of* ——— *in the* ——— *year of the reign of* ——— A O *of* ——— *is duly convicted before me* [or *us*] ——— *of his majesty's justices of the peace for* ——— *in pursuance of an act of the 39th year of the reign of king* George *the third* [set forth the title of the act as in first precedent], *for that the said* A O *on the* ——— *day of* ——— *at* ——— *did, contrary to the said act, keep* [or *use*, as the case may be

not be forthwith paid, such justice shall cause the same to be levied by distress and sale of the offender's goods, together with the

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*a printing press* [or *types for printing*, or *carrying on the business of a letter founder*, or *maker or seller of types*, or *printing presses*] *not having given such notice, and obtained such certificate as by the said act is required*, or *in* ——— *being a place not specified in any notice given by the said* A O, *in pursuance of the said act, whereupon he had obtained such certificate as by the said act is required;* or *not keeping an account of a person to whom the said* A O *sold printing types*, or *a printing press*, as the case may be; or, *not printing his name, &c.* as the case may require; or, *not keeping a copy of a paper printed by him for hire, reward, gain, or profit, to wit, a paper* [describing it, *which the said* A O *printed, &c.* [or specifying any other offence against the act, and the time and place when and where the same was committed.] *Wherefore* I [or *we*] *the said* ——— *do adjudge that he the said* A O *do pay the sum of* ——— *as a penalty for his offence, in pursuance of the said act. Given under our hands and seals this* ——— *day of* ——— *in the year of our Lord* ——— *and in* ——— *the year of the reign of his majesty king* ———.

Form of notice to the clerk of the peace, that any person carries on the business of a letter founder, or maker or seller of types for printing, or of printing presses, prescribed by sec. 28 of the act.

To the clerk of the peace for ——— or his deputy.

*I* A F *of* ——— *do hereby declare, that I intend to carry on the business of a letter founder or maker or seller of types for printing, or of printing presses,* [as the case may be,] *at* ——— *and I hereby require this notice to be entered in pursuance of an act passed in the* 39th *year of the reign of his majesty king* George *the third,* [set forth the title of the act].

Signed in the presence of
A W.

Form of a certificate that the above notice has been given, prescribed by sec. 28 of the act.

*I* C P *clerk* [*or deputy clerk*] *of the peace for* [as the case may be], *do hereby certify, that* A F *of* ——— *hath delivered to me a notice in writing, appearing to be signed by him, and attested by* A W *as a witness to his signing the same, that he*

costs of such distress and sale, and for want of sufficient distress, such offender shall be committed to the common gaol or house of correction for not exceeding six nor less than three calendar months. *s. 35.*

And all pecuniary penalties, whether recovered before a justice or by action, shall be applied, half to the informer, and half to the king. *s. 66.* Application thereof.

And every action and suit, against any justice, peace officer, or other person acting in pursuance of this act, shall be commenced within three calendar months, and shall be laid in the proper county, and if the defendant recover he shall have double costs. *s. 37.* Limitation of actions.

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*intends to carry on the business of a letter founder, or maker or seller of types for printing, or of printing presses, at* ——— *and which notice he has required to be entered in pursuance of an act of the 39th year of his majesty king* George *the third,* [set forth the title of the act]. *Witness my hand this* —— *day of*——

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# SEIZURE OF FELONS' GOODS.

IT has been before shewn* that a man forfeits all his personal goods and chattels to the king or his grantee, *upon a conviction* of treason or felony, or upon a flight for such offences being found, whether he be convicted or acquitted.

But such forfeiture relates only to such personal chattels as the party hath at the time of the conviction or flight found, unless he were killed in flying from, or resisting those who had arrested or had him in custody, and that be presented by the oaths of twelve men, in which case, it is said that the forfeiture shall relate to the time of the offence. 2 *Hawk. c.* 49. *s.* 30. 16.

It has therefore always been held, that one indicted, or appealed of treason, or felony, may, *bonâ fide*, sell any of his chattels, for the sustenance of himself and family, until they be actually forfeited, by conviction or flight found. 8 *Co.* 171. 2 *Hawk. c.* 49. *s.* 33.

But if they are conveyed over, for the purpose of avoiding the forfeiture, it is fraudulent and void; as where a man being in *Newgate* for robbery and burglary, before conviction, made

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† Under title ATTAINDER; see also ESCAPES, in vol. i. p. 733.

a bill of sale of all his goods to his son, *Holt* Ch. J. held, that though a sale, *boná fide*, and for a valuable consideration, was good, because the party had a property in the goods till conviction, and ought to be reasonably sustained out of them, yet that such a conveyance as this could not be intended to any other purpose than to prevent a forfeiture, and defraud the king, and void. *Skinner*, 357, *pl.* 4.

Although the goods of an offender be not forfeited till the conviction or flight found, yet it was formerly a question, whether the sheriff or other officer might not immediately make a simple seizure of the goods of one arrested for treason or felony*, only to inventory and appraise them, and leave them in the custody of the servants of the party, on his giving security against their being embezzled; or in default thereof, to deliver them to the constable, or vill, to be answerable, but yet so that the party accused and his family might have sufficient out of them for their livelihood and maintenance. 1 *Hale's Hist.* 363.

But by 1 *Ric.* 3. *c.* 3, no sheriff, under-sheriff, nor escheator, bailiff of franchise, nor any other person shall take or seize the goods of any person arrested, or imprisoned for suspicion of felony, before that the same person *be convicted or attainted* or else the same goods otherwise lawfully forfeited, upon pain to forfeit the double value of the goods so taken to him that is so hurt in that behalf by action of debt.

And it seems to be the better opinion at this day, 1st, that *before the indictment*, the goods of any person cannot be searched, inventoried, or in any sort seized. 2dly, that *after the indictment*, they cannot be seized and removed, or taken away *before the conviction*, or attainder. 3 *Inst.* 228. 1 *Hale's Hist.* 367.

And although it may be objected, that it is to no purpose to have them searched and inventoried *after indictment*, if they may not be removed, yet it is to be considered that the prisoner or party indicted may sell them, *boná fide*, before conviction; and there is this advantage by the viewing and appraising, that thereby the king has ascertained what the goods are, and may pursue them that take or embezzle them, by information (if the party happen to be convict), and try the property with them, whether they are really sold, or sold only fraudulently, without valuable consideration, to prevent the forfeiture. 1 *Hale's Hist.* 367.

*Self murder*. See HOMICIDE.

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* As it seems he might at common law if the party was indicted.

# SERVANTS.

SERVANTS are either menial or not menial. *Wood's Inst. ch.* 6.

Menial servants are the domestics living (*infra mœnia*) within the walls of the house. *Ibid.*

And servants *not menial* or not domestics, are labourers who not having a sufficient estate to live upon, and not employed in any art, are compellable to serve. *Ibid.*

Having premised this, it is proposed, under this present title, to treat of the law relating to servants in the following order:

*I. Hiring of servants.*

*II. Character of servants.*

*III. Manner of compelling persons to serve; the term for which they must serve; and the hours of labour.*

*IV. Wages of servants.*

*V. Misbehaviour of servants, and differences between them and their masters.*

*VI. The authority of a master over his servant, and the interest which he has in his service.*

*VII. For what acts of the servant the master shall answer.*

## *I. Hiring of servants.*

The retaining a menial servant may be by parol contract, or agreement only, and therefore such a one may be discharged by parol, and without writing. 3 *Bacon's Abr. Mas. & Ser.* (A). *Dalton, c.* 58. Verbal hiring good.

And by the retainer, the servant is in service presently by the law, although he cometh not into his master's service in deed. *Dalton, c.* 58.

And on such contract, the master may have an action against him, if he either refuses to serve at all, or departs before the time is expired for which he agreed to serve. *Dalton*, c. 58.

For what time hiring may be.

Also a servant may hire himself for what time he pleases; but it is said, that if a man retain a servant generally, without expressing any time, the law will construe it to be for one year, because that retainer is according to law. *Co. Lit.* 42. 15 *Viner*, 318.

Also it hath been adjudged, that if a person retain a servant for a year, and so from year to year, as long as both parties shall agree, after a second year begun, the retainer holds good for another year; and that it shall not be a retainer for a year certain, and afterwards at will. 2 *Keble*, 16.

Married persons.

If a married man and his wife do bind themselves to serve, they shall be compelled thereto, according to their covenant or agreement. *Fitz: N. B.* 168. *Dalton*, c. 58. 15 *Viner's Abr.* 320.

And it seems that if a woman who is a servant shall marry, yet she must serve out her time, and her husband cannot take her out of her master's service. *Fitz. N. B.* 168. *Dalton*, c. 58. 15 *Viner's Abr.* 319.

Infants.

It seems clearly agreed that by the common law, infants, or persons under the age of twenty-one years, cannot bind themselves in such a manner as to entitle their masters to an action for departing their service. 3 *Bacon's Abr. Mas. & Ser.* (B).

Therefore, if an infant of seven or eight years make a covenant to serve another, he may notwithstanding depart at his pleasure. *Bro. tit. Labourers*, *pl.* 29. 15 *Viner*, 330.

And yet if an infant or other person who is not *potens in corpore*, be retained, and serve in the best manner they can, their masters must pay them their wages. *Bro. tit. Labourers*, 46. *Dalton*, c. 58.

Servants falling sick.

Also if a servant retained for a year, happen within the time of his service to fall sick, or to be hurt or disabled by the act of God, or in doing his master's business, yet the master must not therefore put such servant away, nor take any part of his wages for such time. *Dalton*, c. 58.

## *II. Character of servants.*

No action lies against a master for words spoken in giving a servant's character.

It is a rule of law, that where words are spoken in confidence and without malice, no action lies. *Buller's Nisi Pri.* 8vo. *ed.* 8.

Therefore where *A*, a servant, brought an action against her former mistress for saying to a lady who came to enquire for the plaintiff's character, that she was saucy and impertinent,

and often lay out of her own bed; but was a clean girl, and could do her work well; though the plaintiff proved that she was by this means prevented from getting a place; yet per lord *Mansfield*, this is not to be considered as an action in the common way for defamation by words; but that the gist of it must be *malice*, which is not implied from the occasion of speaking, but should be directly proved; that it was a confidential declaration, and ought not to have been disclosed; *but if without ground, and purely to defame, a false character should be given*, it would be a proper ground for an action. *Edmonson* v. *Stephenson & ux. Buller's Nisi Pri. 8vo. ed.* 8.

So also in the case of *Weatherstone* v. *Hawkins, Hil.* 26 *Geo.* 3, the Court were clearly of opinion, that a servant cannot maintain an action against his former master for *words spoken* or *a letter written* by him, *in giving a character of the servant*, even though the master make specific charges of fraud *; unless the servant prove the malice as well as falsehood of the charge. —For by lord *Mansfield* Ch. J. I have held more than once, that an action will not lie by a servant against his former master for words spoken by him in giving a character of the servant. *Buller* J. In actions of this kind, unless the plaintiff can prove the words to be *malicious* as well as false, they are not actionable. 1 *Term Rep.* 110.

Master not compellable to give a character.

An erroneous notion seems also to have prevailed, that the master or mistress having received a character with the servant, is bound by law, on such servant being dismissed, to give him or her such character as they may be respectively deserving of, to any other person who may be willing to employ them; for where a special action on the case was brought against a mistress for refusing to give a discarded servant a character, upon the ground, that it was an incumbent duty on her by law to give the plaintiff such a character as she deserved, and that by a refusal to do so, she had been damnified, Ld. *Kenyon* Ch. J. held at *nisi prius*, notwithstanding the feelings which he might entertain on the subject, that a man is not bound by law to give any character at all, although if he do, he must take care to give a true one. The plaintiff was therefore *nonsuited*. *Carrol* v. *Bird, Westm. sitt. af. Tr. Ter.* 40 *Geo.* 3.

Giving servants a false character.

And in order to prevent the counterfeiting of certificates of the characters of servants, it is enacted by 32 *Geo.* 3. *c.* 56, that if any person shall falsely personate any master or mistress, or the executor, administrator, wife, relation, house-keeper, steward, agent, or servant of any such master or mistress, and shall either, personally or in writing, give any false, forged, or counterfeited character to any person offering him or herself to be hired as a servant into the service of any person: *s.* 1.

* Such as that he had frequently charged the master for money which he had not expended.

Or if any person shall pretend or assert in writing, that any servant has been hired for any period of time, or in any station whatsoever, other than that for which or in which they shall have retained such servant: *s.* 2.

Or if any person shall pretend, or assert in writing, that any servant was discharged or left his service at any other time than that at which he was discharged or actually left such service, or that such servant had not been hired or employed in any previous service contrary to truth: *s.* 3.

Or if any person shall offer himself as a servant, pretending that he hath served in any service in which such servant shall not actually have served, or with a false, forged, or counterfeit certificate of character, or shall in anywise add to or alter, efface, or erase any word, date, matter, or thing in any certificate given to him by his last or former actual master, or person authorized by such master to give the same: *s.* 4.

Or if any servant, having before been in service, shall, when offering to hire himself, falsely pretend not to have been hired in any previous service as a servant. *s.* 5.

Such person convicted of any of the offences aforesaid, by confession, or the oath of one witness, before two justices, shall forfeit 20*l.* one moiety to the person on whose information the party shall have been convicted, and the other moiety for the use of the poor of the parish wherein the offence shall have been committed; and if the party so convicted shall not immediately pay the said 20*l.* together with 10*s.* for the costs of conviction, or shall not give notice of appeal, and enter into recognizance as after mentioned, such justices shall commit such offender to the house of correction, there to be kept to hard labour, for not exceeding three months nor less than one, or until he pay the penalty or sum forfeited, together with such costs as aforesaid. *s.* 6.

And the informer shall be deemed a competent witness, notwithstanding he shall be entitled to a part of the penalty. *s.* 7.

Also if any servant who shall have been guilty of any of the offences aforesaid, shall before any information lodged against him, discover and inform against any person concerned with him, in any offence against this act, so as such offender be convicted thereof, such servant shall be indemnified from all penalties to which at the time of such information given, he might be liable. *s.* 8.

And all justices may cause the conviction to be drawn up in the following form, viz.

*Be it remembered, that on the* ——— *day of* ——— *in the year of our Lord* ———, A B *is convicted before us* ——— *two of his majesty's justices of the peace for the*

*county of*——— [specifying the offence, and the time and place when and where the same was committed, as the case shall be].

*Given under our hands and seals, the day and year aforesaid.*

But any person aggrieved may appeal to the next general or quarter sessions, such appellant first entering into a recognizance, with two sureties, in 20*l.* each, conditioned to try such appeal, and abide the order of, and pay such costs as shall be awarded by such sessions, and upon proof of such notice having been given, and of the entering into such recognizance, the justices shall hear and finally determine such appeal in a summary way, and award costs, and the determination of such sessions shall be final; and no conviction or order shall be quashed for want of form, or removed by *certiorari. s.* 10.

### *III. Manner of compelling persons to serve; the term for which they must serve; and the hours of labour.*

By 5 *Eliz. c.* 4. two justices or the mayor or other head officer of a town corporate, and two aldermen or two discreet burgesses, if there be no aldermen (may appoint any woman of the age of 12 years, and under forty years and unmarried, and forth of service, as they shall think meet to serve, to be retained by the year, week, or day, for such wages as they shall think meet; and if she refuse to serve, they may commit her to ward, until she be bound to serve. *s.* 24.

Women may be compelled to serve.

No person shall hire, or be hired, to work for less than one year, in the arts of clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, sheermen, dyers, hosiers, taylors, shoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, smiths, farriers, curriers, sadlers, spurriers, turners, cappers, hatmakers or felt-makers, bowyers, fletchers, arrowhead makers, butchers, cooks, or millers. *s.* 3.

For what time servants are to be hired in trades.

And every person unmarried, and every married person under the age of thirty, having been brought up in the said arts, or that hath used any of them three years, and not having lands, copyhold, freehold, or for life, of the yearly value of 40*s.* nor being worth 10*l.* and so allowed by two justices, or by the mayor, or head officers of the city or town where such person hath dwelt one year, and two aldermen (or other discreet burgesses, if there be no alderman), under their hands and seals, nor being retained in husbandry or in any art, nor in household or in any office with any nobleman, gentleman, or others, nor having a convenient holding in tillage, whereupon he may employ his labour, shall upon request made by any person using the art wherein the person required hath been exercised, be retained;

Who may be compelled to serve in trades.

and shall not refuse to serve upon the pain hereafter mentioned. *s.* 4.

Discharging such servants. And no person shall put away such servant, and no person retained shall depart, before the end of his term, upon the pain hereafter mentioned; unless for reasonable cause, to be allowed before one justice or mayor, or before the chief officer to whom the parties grieved shall complain. *s.* 5.

And no master shall put away such servant at the end of his term, or any servant depart, without one quarter's warning, upon the pain hereafter ensuing. *s.* 6.

Who compellable to serve in husbandry. Every person between twelve years and sixty, not retained, nor apprentice with any fisherman or mariner, nor being in service with any kidder or carrier of corn or meal for the city of *London*, nor with any husbandman, nor in any city or town in any of the arts limited by this statute to take apprentices, nor being retained by the year, or half the year, for digging, seeking, finding, getting, melting, fining, working, trying, or making of any silver, tin, lead, iron, copper, stone, sea-coal, stone-coal, moor-coal, or cherk-coal, nor being occupied in making glass, nor being a gentleman born, nor being a student or scholar in the universities or any school, nor having lands for life, or in fee, of the yearly value of 40*s.* nor being worth 10*l.* nor having a father or mother living, or other ancestor, whose heir apparent he is, having lands of the yearly value of 10*l.* or goods of the value of 40*l.* nor being a necessary or convenient officer or servant, lawfully retained as aforesaid, nor having a farm or holden whereon to employ his labour, nor being otherwise retained, shall be compelled to be retained to serve in husbandry by the year, with any person that keepeth husbandry, and will require any such person to serve, within the same shire where he shall be so required. *s.* 7.

Discharging such servants. And if any person shall put away the servant before the end of his term, unless for cause to be allowed as aforesaid, or without one quarter's warning, such master; unless he prove by two witnesses such cause, or warning, before the justices of *oyer* and *terminer*, justices of assize, justices in quarter sessions, or before the mayor or head officer, and two aldermen, or two discreet burgesses, if there are no aldermen, shall forfeit 40*s.* *s.* 8.

Punishment of a servant not doing his duty, or departing; And if any servant retained according to this statute, shall depart before the end of his term, unless it be for some reasonable cause allowed as aforesaid, or at the end of his term without a quarter's warning before two witnesses; or if any person bound to serve in husbandry or other arts above remembered, by the year or otherwise, do refuse to serve for the wages to be limited by this statute, or promise to serve and do not serve; —such servant upon complaint to two justices, or to the mayor or head officer, and two aldermen, or two discreet burgesses where there are no aldermen, shall be committed by them to

ward, until he be bound to the party to serve and continue for the wages that shall be then limited; and to be discharged upon his delivery without fee to the gaoler. *s.* 9.

And every artificer and labourer retained in building or repairing any church, house, ship, mill, or other work taken in great, shall continue and not depart, unless it be for not paying of wages, or taken to serve the king, or for other lawful cause, or without licence of the owner, before finishing the work; upon pain of imprisonment one month, and 5*l.* to the party, for which he may have his action, besides costs. *s.* 13.

or leaving work unfinished when taken by the piece.

Also no artificer or labourer retained to work with the king, *or any other*, shall depart, until the work be finished, if the person retaining so long will have him; and pay him his wages, upon pain of imprisonment one month. *s.* 14.

All artificers and labourers, being hired for wages by the day or week, shall, betwixt the midst of *March* and *September*, be at their work at five in the morning, and continue until betwixt seven and eight at night; except the time of breakfast, dinner, or drinking, which shall not exceed two hours and a half, *viz.* at drinking one half hour, for his dinner one hour, and for his sleep when he is allowed to sleep, which is from the midst of *May* to the midst of *August*, half an hour, and at every breakfast one half hour: And the said artificers and labourers, between the midst of *September* and the midst of *March* shall be at work from the spring of day until night, except in time for breakfast and dinner, upon pain to forfeit 1*d.* for every hour's absence, to be deducted out of their wages. *s.* 12.

Time of working for labourers.

None of the retained persons in husbandry, or in any of the arts aforesaid, shall depart forth of one city, town, or parish to another, nor out of the lathe, rape, wapentake, hundred, nor out of the county where he last served, to serve in any other city, town, lathe, rape, wapentake, hundred or county, unless he have a testimonial under seal of the city or town, or of the constable or other head officer, and two householders of the city, town, or parish; which testimonial shall be delivered to the servant, and registered by the parson of the parish, taking 2*d.* *s.* 10.

Not to depart without a testimonial.

And the form shall be as followeth, *viz.*

Memorandum, *That* A B, *servant of* C D *of* E, *husbandman* or *taylor*, *&c. in the county, &c. is licensed to depart from his said master, and is at his liberty to serve elsewhere according to the statute in that case made and provided. In witness whereof, &c. Dated the day, &c. of the making.*

And no person that shall depart out of a service shall be retained into any other, without shewing before his retainer such testimonial to the chief officer of the town corporate, and in

every other town and place to the constable, curate, church-warden or other head officer, where he shall be retained, upon pain that such servant so departing without such testimonial shall be imprisoned until he procure one; which if he cannot do within twenty-one days, he shall be whipped and used as a vagabond. And every person retaining such servant without shewing such testimonial shall forfeit 5*l*. And if such person be taken with a forged testimonial, then to be whipped as a vagabond. *s*. 11.

*Shall forfeit* 5*l*.] The master must therefore take notice whether the servant hath a testimonial or no, otherwise if he hath no testimonial, such master is liable by the statute to the penalty of 5*l*. *Dr. & Stud.* 149.

What persons are compellable to work in harvest time.

In the time of hay or corn-harvest, the justices of peace, and every of them, and also the constable or other head officer of every township, upon request, and for the avoiding of the loss of any corn, grain, or hay, may cause all such artificers and persons as be meet to labour, to serve by the day, for mowing, reaping, sheering, or inning of corn, grain, and hay, according to the skill and quality of the person, and none shall refuse, upon pain to suffer imprisonment in the stocks two days and one night: and the constable of the town or other head officer, upon complaint to him made, shall have authority to set the offender in the stocks, upon pain of 40*s*. *s*. 22.

But all persons of the counties where they have accustomed to go into other shires for harvest-work, and having at that time no harvest-work sufficient in the same town or county where they dwelt in the winter last past, bringing with them a testimonial under the hand and seal of one justice or other head officer testifying the same, for which he shall pay not above 1*d*. (other than persons retained in service), may repair in harvest of hay and corn into any other county or place, for the only mowing, reaping, and getting of hay, corn, or grain, and for the only working of harvest-work, as they might have done before this act. *s*. 23.

And by 13 & 14 *Car*. 2. *c*. 12, a person may go abroad to work in harvest, carrying with him a certificate from the ministers and one churchwarden or overseer, that he hath a dwelling house or place in which he inhabits, and hath left a wife and children or some of them there, for other work as his condition shall require, and declaring him an inhabitant there. *s*. 23.

And persons carrying with them such certificate, shall not be liable to be apprehended as vagrants. 17 *Geo*. 2. *c*. 5. *s*. 3.

Recovery of penalties.

One half of all penalties, other than such as are otherwise appointed, shall be to the king, and the other to him that shall sue for the same in any court of record, or before the justices of *oyer* and *terminer*, or before any other justices before remembered; and the said justices, or two of them (1 *Qu*.), and the said mayors or head officers of cities or towns corporate, may hear and determine all offences against this statute, as well upon indictment in sessions, as upon information, action of

debt or bill of complaint, and shall yearly in *Michaelmas* term certify by estreat the fines and forfeitures into the *Exchequer*. 5 *Eliz. c.* 4. *s.* 39.

But all forfeitures within any city or town corporate shall be levied to the use of the same city or town, as other forfeitures have been by the charter. *s.* 45.

And if any servant or apprentice of husbandry, or of any art, science or occupation aforesaid, unlawfully flee into any other shire, the said justices of the peace and the said mayors or other head officers, being justices, may grant writs of *capias*, directed to the sheriffs or other head officers of the places whither they shall flee, to take their bodies, returnable before them, at what time shall please them, so that if they come by such process, they be put in prison till they find surety well and honestly to serve their masters. *s.* 47. Servants fleeing into other counties.

And if a justice shall issue a warrant against such person, and he shall escape into another county, the constable or other officer, on such warrant being indorsed by a justice of such other county, may arrest the offender there, according to the stat. 24 *Geo.* 2. *c.* 55 *.

### *IV. Wages of servants.*

By 5 *Eliz. c.* 4. the justices of peace of every shire, riding, or liberty, or the more part of them being there resiant within the same, and the sheriff if he conveniently may, and every mayor and other head officer within any city or town corporate, wherein is any justice of the peace within the limits of the said city or town corporate, and of the said corporation, shall yearly in *Easter* sessions, or within six weeks next after, assemble and call unto them, such discreet and grave persons as they shall think meet, and having respect to the plenty or scarcity of the time and other circumstances, shall have authority to limit, rate, and appoint the wages, as well of such the said artificers, handicraftsmen, husbandmen, or any other labourers, servants, or workmen, whose wages in time past have been by any law or statute rated and appointed; as also the wages of all other labourers, artificers, workmen, or apprentices of husbandry, which have not been rated, as they shall think meet by their discretions, to be rated, limited, or appointed by the year, or by the day, week, month, or otherwise, with meat and drink, or without meat and drink, and what wages every workman or labourer shall take by the great, for mowing, reaping, or threshing of corn and grain, or for mowing or making of hay, or for ditching, paving, railing, or hedging, by the rod, perch lugg, yard, pole, rope, or foot, and for any other kind of reasonable labour or service. *s.* 15. Justices' power to limit wages of servants.

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* See this statute in vol. i. p. 198.

And by 1 *Jac.* 1. c. 6, the said act 5 *Eliz.* shall extend to the rating of wages of all labourers, weavers, spinsters, and workmen or workwomen whatsoever, either working by the day, week, month, year, or the taking any work by the great or otherwise. *s.* 15.

*And as in some shires the general sessions are held in several places*, it is enacted, that the justices, or the major part of them resiant in any riding, liberty, or division, where the sessions are severally kept, shall have power to rate the wages within such division, as if the same were done in the general sessions for the county. *s.* 5.

But no clothier being a justice of the peace in any precinct or liberty, shall be a rater of wages for the making of cloth; and if there be not above two justices in such precinct, but such as are clothiers, the wages shall be rated by the major part of the common council of such precinct, and such justices, if any there be, as are not clothiers. *s.* 9.

And if any justice, resiant within the county, or mayor or head officer, shall be absent at the rating of wages, and not hindered by sickness or other lawful cause, to be allowed by the justices there assembled for rating of wages, upon the oath and affidavit of some credible person; he shall forfeit to the king 10*l.** 5 *Eliz.* *c.* 4. *s.* 17.

And the justices shall yearly, between *September* 29 and *December* 25, and between *March* 25 and *June* 24, make special and diligent inquiry of the articles of this statute and of the good execution of the same: and where they shall find any defaults, to see the same severely corrected and punished, without favour, affection, malice, or displeasure. *s.* 37.

And every justice of peace, mayor and head officer, for every day that he shall sit in the execution of this statute, shall have allowed unto him, 5*s.* out of the fines due to the king, by force of this statute, in such manner as such justices have been heretofore commonly paid for their coming, and charges at the quarter sessions, so that their sittings be not at one time above three days. *s.* 38.

Rates to be proclaimed,

And by 1 *Jac.* 1. *c.* 6, after the said rates are made and ingrossed in parchment under the hands and seals of the persons having authority to rate the same, the sheriff or mayor may cause proclamation thereof to be made, in so many places as to them shall seem convenient, and every person shall be bound to observe the same. *s.* 6.

and filed among records.

And the said rates, ingrossed in parchment and sealed as aforesaid, shall if the same be in any shire, be kept by the *custos rotulorum*, amongst the records of the county; and in any city

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* For the method of recovering this penalty, see sec. 39, of this act, in the preceding page.

or town corporate, amongst the records of the said city or town corporate. *s.* 8.

And if any person upon the proclamation published, shall directly or indirectly retain or keep any servant, workman, or labourer, or shall give any more or greater wages or other commodity than shall be so appointed in the said proclamation, he shall, on conviction before any of the justices or other head officers above remembered, be imprisoned for ten days without bail, and shall forfeit 5*l*.*. 5 *Eliz. c.* 4. *s.* 18. Giving more than the allowed wages.

And every person that shall be so retained, and take wages contrary to the said statute, or to the said proclamation, and shall be thereof convicted before the justices aforesaid, or any two of them, or before the mayor or other head officers aforesaid, shall be imprisoned for 21 days without bail or mainprize. *s.* 19. Taking more wages than allowed.

And every retainer, promise, gift, or payment of wages, or other things contrary to the said act, and every writing and bond to be made for that purpose, shall be void. *s.* 20.

Also by 1 *Jac.* 1. *c.* 6, if any clothier or *other* shall refuse to pay so much wages to their weavers, spinsters, workmen or workwomen, as shall be rated, and be convicted thereof by confession, or oath of two witnesses, at the assizes or sessions, or before any two justices (1 Qu.) he shall forfeit 10*s*. to the party grieved, to be levied by distress and sale. *s.* 7. Paying less.

In the construction of the statute of *Eliz.* it hath been holden, *though the statute only gives the justices power to set the rate for wages, and not to order payment;* yet that grafting hereupon, they may, from the frequent practice, and the indulgence which the law gives to remedies for wages, *order payment*, as well as assess the rates. 2 *Ld. Raym.* 920. *Fortescue*, 317, 318. 6 *Mod.* 91. 204. *Salk.* 441. 1 *Strange*, 8. 475. 2 *Strange*, 1002. How wages may be recovered.

But the mode of compelling the payment of such wages being insufficient and defective, the oath of the servant not being admissible as evidence †, and the party being obliged to enforce obedience to the order of the justices for payment by the circuitous course of an indictment ‡, it was enacted by 20 *Geo.* 2, *c.* 19. for remedy thereof, that all complaints and disputes between masters or mistresses, and servants in husbandry, hired *for one year*

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* For the method of recovering this penalty, and the application thereof, see sec. 39 in p. 996 supra.

† In the *Q.* v. *Ceville*, an order for payment of servants wages was quashed, because the evidence for the order was only the servant, and he could not be good evidence, being interested. 22 *Viner's Abr.* 408.

‡ See 5 *Mod. Rep.* 459.

*or longer*, (or for a less time than one year, 31 *Geo.* 2. *c.* 11. *s.* 3.)or between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters and other labourers employed *for any certain time*, *or in any other manner*, shall be heard and determined(I) by one justice, *although*

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(I) Form of the complaint of wages due.

Monmouthshire. { *Be it remembered that on the* ——— *day of* ——— S S, *of* ——— *in the said county of* ——— *labourer, cometh before me* J P, *esq. one of his majesty's justices of the peace in and for the said county; and upon oath maketh complaint, that on the* ——— *day of* ——— *last past, he was hired by* M M *of* ——— *in the county aforesaid, husbandman, to serve him the said* M M *as his servant in husbandry for the term of one whole year from thence next ensuing, at and for the wages of* ———; *that he the said* S S *hath well and truly served the said* M M, *for and during the said term according to his hiring and retainer as aforesaid; and that he the said* M M *hath neglected or refused, and still doth neglect or refuse* [as the case is] *to pay to him the said* S S *the wages therefore justly due and owing unto him for the said service* [or *the sum of* ——— *part of the wages justly due unto him for the said service, and in full discharge thereof*, as the case is] *Whereupon the said* S S *prays judgment of me the said justice, and that such proceedings may be had in the premises, as the statute in that behalf made doth direct and require.* S S.

*Before me,*
J P.

Summons of the master thereon.

Monmouthshire. { To the constable of ——— in the said county.

*Whereas complaint upon oath hath this day been made before me* J P, *esq. one of his majesty's justices of the peace in and for the said county of* ———, *by* S S *of* ——— *in the said county, yeoman, that on the* ——— *day of* ——— [and so on as in the complaint, as far as the word *whereupon*, then proceed,] *These are therefore to require you immediately on the receipt hereof, to summon the said* M M *to be and personally appear before me, at* ——— *in the said county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the forenoon of the same day, to shew cause why he doth neglect and refuse to pay the said wages, and be you then and there present to certify what you shall have done in the execution hereof. Herein fail not.*—Given under my hand and seal the ——— day of ——— in the year ———

*no rate of wages has been made that year;* which justice may examine upon oath any such servant or person aforesaid, or any witness, and make such order (II) for payment of so much wages as seems just; provided the sum in question do not exceed 10*l.* with regard to any servant, nor 5*l.* with regard to any artificer, handicraftsman, or other person aforesaid; and in case of refusal or non-payment for twenty-one days after such determination, such justice shall issue his warrant (III) to levy

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(II) Order for payment of wages.

Monmouthshire, to wit. } *Whereas complaint upon oath hath been made before me* J P, *esq. one of his majesty's justices of the peace, in and for the said county of* ——— *by* S S *of* ——— *in the said county, labourer, that on the* ——— *day of* ——— [and so on as before]: *And whereas the said* M M, *having been duly summoned to appear before me to shew cause why he doth neglect and refuse to pay the said wages, hath this day in pursuance of my said summons appeared before me, but he the said* M M *hath not proved that the said wages have been duly paid by him unto the said* S S, *nor shewn any just or sufficient cause why the same shall not be paid. I the said justice, having therefore duly examined into the truth and circumstances of the said complaint, and it fully and satisfactorily appearing to me by the oath of the said* S S, *that the said wages are still wholly due and owing unto him from the said* M M, *do hereby adjudge, determine, and order, that he the said* M M *do forthwith upon due notice of this my present order, pay or cause to be paid unto him the said* S S, *the sum of* ——— *which appears to me to be justly and reasonably due from him the said* M M, *to him the said* S S, *for and on account of his wages as aforesaid.*—Given under my hand and seal the ——— day of ——— in the ——— year of the reign of ———

To *M M* of ——— husbandman.

[Or on the master's not appearing. *And whereas it hath been proved before me upon the oath of* C C, *constable of* ——— ——— *that he the said* C C *did duly summon the said* M M *to appear before me the justice aforesaid, at a reasonable time in the said summons mentioned, in order to shew cause why he doth neglect or refuse to pay the said wages; but he the said* M M *hath not appeared before me according to my said summons, I the said justice having therefore, &c.* as before].

(III) Form of the warrant of distress.

Monmouthshire, to wit. } To the constable of ———

*Whereas complaint upon oath hath been made before me* J P, *esq. one of his majesty's justices of the peace in and for the*

the same by distress and sale of the goods of such master or mistress, or person employing such artificer, handicraftsman, or person aforesaid, rendering the overplus to the owner after payment of the charges of such distress and sale. *s.* 1.

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*said county of* —— *by* S S *of* ——— *in the said county, labourer, that on the* —— *day of* —— *last past, he was hired by* M M *of* —— *in the said county, husbandman, to serve him the said* M M *as his servant in husbandry for the term of one whole year, from thence next ensuing, at and for the wages of* ———; *that he the said* S S *hath well and truly served the said* M M *for and during the said term, according to his hiring and retainer as aforesaid; and that the said* M M *hath neglected* [or refused, as the case is] *to pay unto him the said* S S, *the wages therefore justly due and owing to him for the said service: And whereas the said* M M *having been duly summoned to appear before me to answer the said complaint, hath in pursuance of my said summons appeared before me, but not proving that the said wages had been duly paid by him to the said* S S, *nor shewing any just or sufficient cause why the same should not be paid: And the same having been fully and satisfactorily proved by the oath of the said* S S *to be still due and owing from him the said* M M *unto him the said* S S: *I the said justice did therefore, on the* ——— *day of* ——— *now last past, by writing under my hand and seal, adjudge, determine and order, that he the said* M M *should pay to him the said* S S *the sum of* ——— *which appeared to be justly and reasonably due from him the said* M M, *to him the said* S S, *for and on account of the wages as aforesaid: And whereas it duly appears to me by the oath of* ——— — *that the said* M M, *on the said* ——— *day of* ——— — *now last past, had due notice of my said order; and that payment of the said sum of* ——— *was then demanded of him the said* M M, *by him the said* S S, *but that he the said* M M, *did not then pay, nor hath yet paid the same, or any part thereof; these are therefore to authorize and command you to distrain the goods and chattels of him the said* M M; *and if within the space of* [five] *days next after such distress by you made, the said sum of* ——— *together with the reasonable charges of taking and keeping the said distress, shall not be paid, then you are hereby further authorized and commanded to sell the said goods and chattels so by you distrained and out of the money arising by the sale thereof, you are to pay the said sum of* ——— *unto him the said* S S, *returning the overplus upon demand unto him the said* M M, *the reasonable charges of taking, keeping, and selling the said distress, being thereout first deducted.* Given under my hand and seal the ——— day of ——— in the year ——

And if any person shall think himself aggrieved by such determination, order, or warrant of such justice, he may appeal to the next general quarter sessions; which sessions are finally to determine the same, and to award such costs to the appellant or respondent as they judge reasonable, not exceeding 40*s.* to be levied by distress and sale as aforesaid *s.* 5.

And no *certiorari* shall issue to remove any proceedings hereupon. *s.* 6.

In the construction of the statute of *Eliz.* it hath been holden, that the justices of peace have no jurisdiction to order payment of wages, except in the case of husbandmen, and such servants whom they may compel to serve according to the statute. *Cas. L. & E.* 68. 6 *Mod. Rep.* 91. *Carthew*, 156. Over what servants the justices have jurisdiction by these statutes.

For where justices of peace made an order for a person to pay so much to his coachman, and it was moved against the order, that the statute 5 *Eliz. c.* 4, extends not to coachmen or other servants than in husbandry; the court were of that opinion, and quashed the order. 2 *Jones*, 47.

And on the authority of this case it hath been held, that the justices cannot make orders for the payment of footmen, bricklayers, carpenters, or the like servants' wages, because their jurisdiction is confined, as has been above observed, to the wages of such servants whom they may compel to serve according to the statute. 6 *Mod. Rep.* 204, 205.

So where the justices of peace made an order upon a person that he should pay *B* so much money for labour or work done, without saying so much as that he was his servant, it was quashed—for by the court, this might be carpenter's work. 6 *Mod. Rep* 91.

So also where an order was for payment of wages, reciting that two persons were retained by the overseer of the works in *Hampton Court Gardens*, at so much per day, and had worked there so many days; the same was quashed—for by the court, the statute does not extend to gentlemen's servants, nor to journeymen with their masters. *Salkeld* 412.

So when one *Ryecraft*, a justice of peace in *Middlesex*, made an order for the payment of a seaman's wages; upon an action brought against him, the plaintiff recovered 30*l.* damages. 5 *Mod. Rep.* 140.

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[Or if the defendant made default, say, *And whereas the said* M M *hath been duly summoned to appear before me to answer the said complaint, but having neglected to appear in pursuance of my said summons, and it being fully and satisfactorily proved to me by the oath of the said* S S, *that the sum of* ———— *is still due and owing from him the said* M M, *unto him the said* S S; *I the said justice did therefore, &c.* as above.]

And in this respect, the stat. 20 *Geo.* 2. c. 19, doth not appear to have made any alteration, for although the words 'potters and other labourers employed for any certain time, or in 'any other manner,' are very comprehensive;—yet it seems according to the general and better opinion*, that the word *labourers* ought to be considered as restricted to labourers of the class and description before mentioned, and not as extending to every denomination of servants, such as clerks, shopmen, livery servants, or workmen in particular trades and manufactures not enumerated†. If this were not to be taken as the true construction of the act, Mr. *Caldecot* very justly observes, that it would not be easy to suggest a reason why the legislature should by particular acts of parliament interpose in behalf of the workmen in the woollen, linen, cotton, iron, leather, fur, hemp, flax, mohair, silk, and other manufactures ‡, if the same remedies were open to all descriptions of persons, and in every occupation under the general law. — *See Caldecot's Cases, p.* 16.

But formerly, in favour of servants, the court, unless the contrary appeared upon the face of the order, would presume servants to be servants in husbandry. 2 *Salk.* 441. 484. *Ca. L. & E.* 68. 6 *Mod. Rep.* 91. 1 *Strange*, 8. 475.

Order of payment of wages to shew that the justices have jurisdiction.

It has however been since determined otherwise; and it is now finally settled that the justices of peace must shew upon the face of their order, that it is a matter within their jurisdiction; for in the case of the *K.* v. *Helling*, *Mic.* 3 *Geo.* 1, there was an indictment for not paying servants wages, reciting an order of two justices, whereby it appeared that 9*l.* was due, which the defendant refused to pay, having had notice of the order. It was moved to quash the indictment, because it did not set out the labour of the servant, and was only generally for wages, and because the justices have only jurisdiction in cases of husbandry; and the order ought to have shewn that this was a matter within their jurisdiction.—By *Eyre* J. The practice is, if an order be for paying wages, it is supposed to be such as the justices have power over.—But *Parker* Ch. J. and *Pratt*, J. were of another opinion; and in the next term following the indictment was quashed. 1 *Strange*, 8.

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* See *Caldecot's Cases*, p. 16.

† Although the title of an act of parliament is not to be taken into consideration in the construction of it, as it is no part of the statute, yet it may not be improper to observe, that the title of the statute, 20 *Geo.* 2. c. 19. is as follows; "An act for the better adjudging and more easy recovery of the wages of certain servants, and for the better regulation of such servants."

‡ See these acts under the title MANUFACTURERS.

So in the case of the *K.* v. *Clegg*, *Mic.* 8 *Geo.* 1. it was said by *Fortescue* J. that in the case of servants' wages, although jurisdiction is given only in husbandry, yet orders have been held good, where it did not appear that the service was in husbandry; for the Court said, they would intend it so, unless the contrary appeared.—But by *Pratt*, Ch. J. This was always wondered at, and in my lord *Parker*'s time it was actually contradicted in the *K.* v. *Helling*. 1 *Strange*, 475.

And lastly, the *K.* v. *The Inhabitants of Hulcott*, *Hil.* 36 *Geo.* 3. In this case, a servant becoming insane, was taken by the master before a justice, who made the following order: "Whereas complaint hath been made before me, *E B*, one, "&c. upon the oath of *J S* that *E L*, *who was hired by the* "*said J S, to be his servant from Mich.* 1793 *to Mich.* 1794, "at the wages of 5*l.* was taken ill on or about the 11th of "*Feb.* last, and, in consequence thereof, is become insane, and "wholly unfit for service; and whereas the said *E L* hath "been brought before me this day, and doth appear to me, the "said justice, to be insane and wholly unfit for service; I do "therefore hereby order, in pursuance of the statute in that "case made, that she the said *E L* be discharged; and I do "hereby discharge her, the said *E L* from her said service." IT WAS OBJECTED to the order, that it did not appear to be within the jurisdiction of the justice, because it was not stated in the order that she was a servant in husbandry. And the Court were of opinion, that as it did not appear on the face of this order that the justice had jurisdiction, the pauper was not legally discharged from her service. 6 *Term Rep.* 583.

It is also to be observed, that if a person retains a servant, and agrees to pay him so much by the day, month, or year, he may have an action against the master on the contract, or against his executors; and every such retainer will be presumed to be in consideration of wages, unless the contrary appears. 9 *Co.* 88. *a. b.* 2 *Roll's Rep.* 269. Bringing an action for wages.

So if a man be retained in *London* to serve beyond sea, he may have his action for his wages in *England*, and lay his action in any county, in like manner as an obligation bearing date at *Roan* in *France*, may be sued in *England*, alleging the place to be in such a county where he brings his action. *Brownl.* 54.

### *V. Misbehaviour of servants, and differences between them and their masters.*

By 5 *Eliz.* c. 4, if any servant, workman, or labourer, shall wilfully or maliciously make an assault or affray upon his master or mistress, or upon any other peron having charge or oversight Servant assaulting his master.

† See vol. i. p. 332, 347.

of such servant or labourer, or over the work wherein he is hired to work, and shall thereof be convicted before any two justices, or mayor or other head officer, by confession or oath of two witnesses, he shall be imprisoned for a year or less, by the discretion of two justices out of a town corporate, and in a town corporate, of the mayor or other head officer, with two others of the discreetest persons of the same corporation: and if the offence shall require further punishment, then to receive such other open punishment, so as it extend not to life or limb, as the justices in sessions, or the mayor or other head officer, and six, or four at least, of the discreetest persons of the corporation, shall think convenient for the quality of the offence. *s.* 4.

Complaint of masters against their servants.

By 20 *Geo.* 2. *c.* 19, it shall be lawful for one justice, upon complaint (IV) made upon oath, by any master, mistress, o

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(IV) Complaint against a servant for misbehaviour.

Monmouthshire. { *BE it remembered, that on the* ——— *day of* ——— *in the year* ——— M M *of* ——— *in the said county of* M, *husbandman, cometh before me* J P, *esq. one of his majesty's justices of the peace in and for the said county, and maketh complaint upon oath, that* S S *of* ——— *aforesaid, in the county aforesaid, servant in husbandry to him the said* M M, *hath in his said service* [or *employment*] *been guilty of divers misdemeanours, miscarriages, and ill behaviour towards him the said* M M, *and in particular* [here state the instances of misconduct]. *Whereupon he the said* M M *prayeth judgement of me the said justice in the premises, and that such proceedings may be therefore had as the statute in that behalf made doth direct and require.*

M M.

Sworn before me,

J P.

Form of a warrant on the above complaint.

Monmouthshire. { To the constable of——

*Whereas complaint upon oath hath been made before me* J P, *esq. one of his majesty's justices of the peace in and for the said county of* M, *by* M M *of* ——— *in the said county, that* S S *of* ——— *aforesaid, in the county aforesaid, servant in husbandry to him the said* M M, *hath in his said service* [or *employment*] *been guilty of divers misdemeanours, miscarriages, and ill behaviour, towards him the said* M M, *and in particular* [as before]: *These are therefore to authorise and command you forthwith to apprehend the said* S S *and bring him before me to an-*

employer, against any servant in husbandry, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter or labourer, concerning any misdemeanor, miscarriage, or ill-behaviour in such service, to hear and determine the same, and to punish the offender by commitment (V) to the house of correction, there to be corrected and held to hard labour for a reasonable time not exceeding one calendar month, or by abating (VI)

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*swer unto the said complaint, and to be further dealt with according to law.* Given under my hand and seal the ——— day of ———

(V) Form of the commitment.

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|---|---|
| Monmouthshire. | To the constable of ——— in the said county, and to the keeper of the house of correction, at ——— in the said county. |

*Whereas complaint on oath hath been made before me* J P, *esq. &c.* [proceeding as before in reciting the complaint] : *And whereas I the said justice have in pursuance of the statute in that case made and provided, after duly examining into the truth of the said complaint, and hearing the proofs and allegations of both the said parties touching the matter of the said complaint; upon due consideration thereof, adjudged and determined that the said* S S *is guilty of the misdemeanours, miscarriages, and ill behaviour, so charged against him as aforesaid* *: *These are therefore to authorise and command you the said constable forthwith to take and convey the said* S S *to the said house of correction, at ——— aforesaid, and to deliver him to the keeper thereof, together with this warrant : And I do hereby command you the said keeper of the said house of correction, to receive the said* S S *into your custody in the said house of correction, there to remain, and be corrected, and held to hard labour for the space of one calendar month from the date hereof.* Given under my hand and seal the ——— day of ——— in the year ———

(VI) Form of abatement of wages.

Proceeding as before to ——— *adjudged and determined that the said* S S *is guilty of the misdemeanors, miscarriages, and ill behaviour so charged against him as aforesaid : I do therefore hereby order, as a punishment for the said offence, that the said* S S *shall abate from his wages to be paid to him by*

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* Therefore there ought to be a conviction previous to the issuing of this warrant.

some part of his wages, or by discharging (VII) him from his service. *s.* 2.

Complaints of servants against their masters.

And in like manner it shall be lawful for such justice, upon any complaint (VIII) upon oath, by any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, against such master, mistress, or employer, concerning any misusage, refusal of necessary provision, cruelty, or ill treatment, to summon such master, mistress, or employer, to appear before him at a reasonable time to be prefixed in such summons; and he shall examine into the matter of

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*the said* M M, *the sum of* ——; *and do hereby discharge the said* M M *from the payment of the said sum of* —— *as part of the wages of him the said* S S. Given under my hand and seal the —— day of —— in the year ——

(VII) Form of the discharge.

Proceeding as in the last precedent: *I do therefore hereby order as a punishment for the said offence, that the said* S S *be discharged, and do hereby discharge him the said* S S *from his said service* [or *employment*] *and the said* M M *from keeping him the said* S S. Given under my hand and seal the —— day of —— in the year ——

(VIII) Form of the complaint of a servant against his master for ill usage.

Monmouthshire. } *BE it remembered, that on the* —— *day of* —— *in the year* —— S S *of* —— *in the county aforesaid, servant in husbandry to* M M *of* ——, *cometh before me* J P *esquire, one of his majesty's justices of the peace in and for the said county, and maketh complaint upon oath, that at* —— *last, he the said* S S *was duly hired by the said* M M, *to be servant in husbandry to him the said* M M *for the space of one whole year from thence next ensuing; and that he the said* S S *did accordingly, at* —— *last, as aforesaid, enter upon, and afterwards until this present time hath continued, and still is and doth continue in the said service* [or *employment*, *and that he the said* M M *hath at divers times previous to the time of exhibiting this complaint, misused him the said* S S, *and in particular* [here state the particular cause of complaint]; *whereupon he the said* S S *prayeth judgment of the said justice in the premises; and that such proceedings may be therefore had as the statute in that case made doth direct and require.*

Sworn before me, S S

J P.

such complaint, whether such master, mistress, or employer shall appear or not (proof being made upon oath of their being summoned (IX), and upon proof of the complaint upon oath, he may discharge (X) such servant or other person aforesaid, from his service and employment, which discharge shall be given under the hand and seal of such justice *gratis*. *s.* 2.

But if any person think himself aggrieved by the determination, order, or warrant of such justice (except any order of commitment), he may appeal to the next general quarter sessions; which sessions is finally to determine the same, and to award

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(IX) Summons of the master.

Monmouthshire. } To the constable of ———

*Whereas complaint upon oath hath been made before me* J P, *esq. one of his majesty's justices of the peace in and for the said county of* M, *by* S S *of* ——— *in the said county, servant in husbandry to* M M *of* — —, *that he the said* S S *was at* ——— *last duly hired by the said* M M, *to be servant in husbandry to him the said* M M *for one whole year from thence next ensuing; and that he the said* S S *did accordingly, at the time aforesaid, enter upon, and afterwards unto this present time hath continued, and still is and doth continue in the said service* [or *employment*], *but that he the said* M M *hath at divers times during the said service, misused him the said* S S, *and in particular* [here state the specific cause or complaint, such as the *refusal of necessary provisions, cruelty, or other misusage*]: *These are therefore to require you immediately on the receipt hereof, to summon the said* M M *to be and appear before me on* ——— *the* ——— *day of* ——— *at* ——— *in the said county, at the hour of* ——— *in the forenoon of the same day, to answer unto the said complaint: And be you then and there present to certify what you shall have done in the execution hereof.* Given under my hand and seal, the ——— day of ——— in the ——— year ———

(X) Form of the discharge of the servant.

Proceeding as before to the end of the complaint]: *And whereas the said* M M *having been duly summoned to appear before me to answer unto the said complaint, hath accordingly appeared before me, but he the said* M M *hath not proved any thing whereby to clear himself of and from the said charge and complaint; and on the contrary, it hath been fully and duly proved before me, by the oath of* ———, *that he the said* M M *is guilty of the several offences so charged against him as afore-*

such costs to the appellant or respondent, as they judge reasonable, not exceeding 40*s*. to be levied by distress and sale as aforesaid*. *s*. 5.

And no *certiorari*, or other process shall issue to remove any proceedings into any court of record at *Westminster*. *s*. 6.

Also by 6 *Geo*. 3. *c*. 25, if any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall contract with any person whomsoever, for any time whatsoever, and shall absent himself from service before the term shall be completed, or be guilty of any other misdemeanour: then any justice where such artificer or person aforesaid shall be found, upon complaint thereof made upon oath by the person with whom he shall have so contracted, or by his steward or agent, may issue his warrant for apprehending every such artificer or person aforesaid, and examine into the complaint; and if it shall appear to such justice that he shall not have fulfilled such contract, or hath been guilty of any misdemeanour, such justice may commit such person to the house of correction; for not exceeding three months nor less than one month. *s*. 4.

But any person aggrieved by such determination, order, or warrant, of any justice, except an order of commitment, may appeal to the next general quarter sessions, giving six days notice of such appeal, and of the cause and matter thereof, to such justice and the parties concerned, and entering into a recognizance within three days after such notice, before some justice, to try such appeal, and abide the order, and pay such costs as shall be awarded by the quarter sessions; which said sessions upon due proof of such notice and recognizances, shall determine such appeals;

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*said*: *I do therefore, in pursuance of the statute in that behalf made, hereby order that the said* S S *be discharged, and do hereby discharge him the said* S S *from his said service* [or *employment*] *accordingly*. Given under my hand and seal the ——— day of ——— in the year ———

[Or on the master's not appearing—*And whereas it hath been proved before me by the oath of* C C, *constable of* ——— *that he the said* C C *did duly summon the said* M M *to appear before me at a reasonable time in the said summons mentioned, in order to make answer unto the said complaint; but notwithstanding the same, he the said* M M *hath not appeared before me according to such summons: I the said justice have therefore proceeded to examine into the matter of the said complaint, and the said* S S *having fully and satisfactorily proved before me upon oath that the same is true, I do in pursuance of the statute*, &c. as before].

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* See. s. 1. of this act in p. 1001, 1002 supra.

and shall give such relief and costs to the parties as they shall judge proper, and their judgments shall be conclusive to all parties concerned. *s.* 5.

And nothing in this act shall extend to the stannaries in *Devon* and *Cornwall*. *s.* 6.

Soliciting servants to steal.

And to solicit a servant to steal his master's goods is a misdemeanour, though it be not charged in the indictment that the servant stole the goods, nor that any other act was done except *the soliciting and inciting*; and such offence is indictable at the sessions, having a tendency to a breach of the peace. *Rex* v. *Higgins, Mic.* 42 *Geo.* 3. 2 *East's Rep.* 5.

How far a master is justified in turning off a servant without the intervention of a magistrate.

The master cannot discharge his servant during his term, *unless he has agreed to it*, no more than the servant can depart without the agreement of his master. *Bro. Abr. tit. Lab. pl.* 27. 15 *Viner's Abr.* 320.

But it seems to be established by the case of the *K.* v. *Brampton, Hil.* 17 *Geo.* 3, that a master may of his own authority, and without the intervention of a magistrate, dismiss the servant *for moral turpitude*; even though it be not such for which the servant may be prosecuted at common law.—In this case, it appeared, that a female servant hired for a year had been discharged by her master three weeks before the end of the year, ON ACCOUNT OF HER BEING WITH CHILD; and the question was, whether the master could for such cause put an end to the contract within the year, without the intervention of a magistrate, and thereby prevent such servant from gaining a settlement?—By lord *Mansfield*. There must be a hiring for a year, and a continuance for a year in that service to gain a settlement; the question therefore in this case is, whether the contract was dissolved within the year? and that depends upon this; has the master done right or wrong in discharging his servant for this cause? *I think he did not do wrong.* Shall the master be bound to keep her in his house? to do so would be *contra bonos mores*; and in a family where there are young persons, both scandalous and dangerous.—*Willes* J. Here, if the master had daughters, it would not be fit that he should keep such a servant. 'And 'I think he could not avail himself of the authority of a magistrate, THE JURISDICTION OF JUSTICES being confined to cases 'in husbandry *. *Caldecot's Cases*, 11.

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* Upon this case Mr. *Caldecot* observes, that it does not appear to be fully and absolutely settled, whether the jurisdiction of justices extends to *servants in general, or is confined to servants in husbandry?* or whether masters in general may *for every species of misconduct or general misbehaviour* discharge their servants by their own authority and without the intervention of a magistrate: but he adds, That whether they may or may not, yet, by the general practice throughout the kingdom, and particularly in large towns, this power (however war-

Also in the *K.* v. *Welford*, *Tr.* 18 *Geo.* 3, *John Dyer* was hired for a year, and continued in his service till within three weeks of the end of the year, when his master, *on account of a supposed criminal intimacy* with a servant girl then big with child, discharged him, and offered him all his wages except 4*s*. which he insisted upon detaining for the three weeks; the servant refused to allow it, being willing to stay if his master would let him: after he was discharged, he went to a justice; but the justice telling him he could not recover the whole, and having no money to subsist upon, he accepted the money that the master had offered him, abating the 4*s*. for the three weeks; and no order in writing was ever made by any justice for discharging him from his master's service. —*It was insisted* that the above case of the *K.* v. *Brampton* was *in point*, for that the offence was equally *contra bonos mores* in the case of a man as of a women. *On the other side* it was said, that the fact of the pauper's criminal conduct was only *hypothetically* and not fully stated; that an *imaginary* crime could be no good cause of his discharge, and that the court would not suffer a man's right to be concluded upon by a consent

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ranted) is exercised by masters; and that in *London*, *Westminster*, and the environs in particular, it is the general usage or practice to dismiss servants with a month's wages. *Caldecot's Cases*, 14 *n*. [*c*].

'It must however, with deference to that acute and judicious report-'er, be observed, that this clearly depends upon the express terms of the 'hiring and retainer in those places; which most usually are, that 'the servant shall have wages at the rate of so much *per annum*, and 'shall not be dismissed without a month's wages or a month's no-'tice.'

Mr. *Caldecot* also observes, that the question has not of late years been brought before the court for argument; but he mentions a case, *Temple* v. *Prescott*, *esq*. at the sittings at *Westminster*, 1773, where it occurred—a wet nurse, RETAINED FOR THE YEAR *, was discharged by her mistress, who tendered her her wages, in proportion to the time she had served; this was refused, and the action brought for the whole year. It was proved on behalf of the defendant, that the plaintiff had been frequently insolent to her mistress, the defendant's wife; and was subject to violent fits of passion, on which she had several times frightened, and once awakened her mistress, while sleeping, before her recovery. It was also proved that these fits of passion must be injurious to her milk; and it was insisted that all these circumstances amounted to reasonable cause, and even created a necessity of discharging the plaintiff.—But by lord *Mansfield*. No person can be a judge in his own cause; and this first principle could not be meant to be overturned by any law or usage whatsoever, and the servant had a verdict for the whole year. *Caldecot's Cases*, 14, 15.

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* This therefore seems to have been *an absolute* hiring for a year, and not according to the common practice as above.

which arose solely from the misery of his situation.—By lord *Mansfield.* Had the fact of criminality been *positively* stated, to be sure it would have fallen within the principle of the *K.* v. *Brampton;* but as the intention of finding this fact is represented to have been different from the finding, and as there might have been more complete consent, the case must go down to be restated. The case was restated at the following sessions; and *the fact of the pauper's criminality was positively found;* [the sessions also at the instance of the appellants, added, that *this was the case of a servant in husbandry,* with a view of taking it out of the *K.* v. *Brampton;* but the case was abandoned, and never came again into *Westminster hall. Caldecot's Cases,* 57.

So also if the servant be taken into custody and legally detained for an offence, which prevents his completing his service, the master is authorized to discharge him; for in the case of the *K.* v. *Westmeon,* it appeared that the pauper being hired for a year, was four days before the expiration of such year taken into custody by virtue of a warrant issued against him by a justice of the peace, for being the father of a bastard child born about six months before; two days after he was taken into custody, his master settled with him for his wages, deducting one shilling on account of his not serving him to the end of the year.—By lord *Mansfield.* Here are four days wanting in the service, and it is by means of his own act that the servant becomes incapable of completing it; his conduct is an offence against morality and the laws, in whatsoever jurisdiction those laws are administered; and the consequences of it are equivalent to a wilful absence, for he can gain no settlement; and if an action had been brought for his wages, he could not have recovered upon a *quantum meruit* for these four days; the other judges concurred. *Caldecot's Cases,* 129.

But it was said by lord *Mansfield* in the same case, that if a master hired a servant after the offence committed, *viz.* (after being father of a bastard child), and that not in his own house, he shall not, at the close of the year, discharge him under this pretence, it is not a debauching of his servant, or turning his house, as it were, into a brothel. *Caldecot's Cases,* 134.

And it is not clearly settled whether insanity is a good cause for discharging a servant; for although it is reported in 5 *Ter. Rep.* 657, that in the case of the *K.* v. *Sutton,* lord *Kenyon* Ch. J. said that insanity was not a legal cause for discharging a servant, yet in the case of the *K.* v. *Hulcott,* when this was mentioned and relied on, *Ld. Kenyon,* interrupted the counsel and said, I am not prepared to go that length; in that case there had been an application to a magistrate to discharge: and I think that the master could not of his own authority discharge the servant for that cause. 6 *Ter. Rep.* 587.

### VI. *The authority of a master over his servant, and the interest which he has in his service.*

How far a master may justify beating a servant.

It is clearly agreed that a master may correct and punish his servant in a reasonable manner for abusive language, neglect of duty, or the like, and that in an action of assault and battery brought against him, he may justify that he was his servant, gave provoking language or the like; and if it appears in evidence that the punishment was such as is usual from masters to their servants, the master will be acquitted. 3 *Bacon's Abr. tit. Mas. & Ser.* (N). *Buller's Nisi Prius, 8vo. ed.* 18.

And as the law allows the master to chastise his servant moderately, he shall not thereby be deemed to forfeit a recognizance of the peace. 1 *Hawk. c.* 60. *s.* 23.

But as such correction must be moderate, it has been held that the master cannot justify wounding his servant. 2 *Mod. Rep.* 167. 8 *Mod. Rep.* 120. 218. 330.

And it is said that *battery* by the master, or licence of the master, are good causes for the servant to depart. *Bro. Lab. pl.* 51. *Fitz. Nat. Br.* 168. 15 *Viner*, 319.

Also it hath been held, though a master may beat his servant, that yet he cannot delegate that power to another. 3 *Bacon's Abr. tit. Mas. & Ser.* (N).

From this authority which a master hath over his servant, it is held in law, that if a master designeth moderate correction to his servant, and accordingly useth it, and the servant by some misfortune dieth thereof, this is not murder, but *per infortunium*; because the law alloweth him to use moderate correction, and therefore the deliberate purpose thereof is not from pre-conceived malice. 1 *Hale's Hist.* 454.

But if the master design an immoderate and unreasonable correction, either in respect of the measure or manner, or instrument thereof, and the servant die thereof; this, according to *Hale*, cannot be an excuse for murder, if done with deliberation and design; nor from manslaughter if done hastily, passionately and without deliberation; and herein, says he, consideration must be had of the manner of the provocation, the danger of the instrument which the master useth, and the age or condition of the servant stricken. 1 *Hale's Hist.* 454.

And if the servant shall depart out of his master's service, and the master happen after to lay hold of him, yet the master in this case may not beat or forcibly compel his said servant against his will to return or tarry with him, or do his service: but either he must complain to the justices, for his servant's departure, or he may have an action against him. *Dalton, c.* 121. *s.* 3.

What a master or servant

From the relationship between a master and servant, it hath

been agreed, that a master killing a person in defence of his servant, or a servant in defence of his master, are not guilty of murder, and that in these cases the act of the assistant shall have the same construction, as the act of the party assisted should have had, if it had been done by himself. 1 *Hale's Hist.* 484.

may justify doing in each other's defence.

But a servant is not excused the commission of any crime, whether capital or not capital, done by the command or coercion of the master. 1 *Hawk.* c. 1. s. 14.

For it is laid down as a rule, that in every case where the master has not power to do a thing, whoever does it by his commandment is a trespasser as well as the master. 8 *E.* 4. 45. 3 *Bacon's Abr. tit. Mas. & Ser.* (L)

Also a servant may justify an assault in defence of his master, and he shall not be deemed thereby to forfeit a recognizance of the peace. 2 *Roll. Abr.* 541. *Owen*, 151. *Salk.* 407. *Buller's Nisi Pri.* 18. 1 *Hawk. c.* 60. *s.* 23.

But it is said, that he cannot justify beating another, in defence of his master's son. 1 *Hawk. c.* 60. *s.* 24.

Also, by some opinions, a master may justify an assault in defence of his servant; but others hold that he cannot, because in such case he may have an action for the loss of his service. 2 *Roll. Abr.* 546. *Owen*, 151. *Salk.* 407. *Buller's Nisi Pri. 8vo. ed.* 18. 1 *Hawk. c.* 60. *s.* 23.

And yet it seems, according to *Hawkins*, that a master shall not forfeit a recognizance of the peace, for beating another in defence of his servant. 1 *Hawk. c.* 60. *s.* 24.

And in the case of *Tickel* v. *Read*, *Ea.* 13 *Geo.* 3, it being contended that the duty of the master and servant is reciprocal; and that if the servant owes to the master fidelity and obedience, the master owes to the servant protection and defence, and that therefore the defendant might well justify that he assisted his servant, whom the plaintiff was beating; lord *Mansfield* is reported to have said: I cannot say that a master interposing, when his servant is assaulted, is not justifiable under the circumstances of the case, as well as a servant interposing for his master: it rests on the relation between master and servant. *Loft's Rep.* 215.*

The master's remedy against others for enticing away and other injuries done to his servant.

It is clearly agreed that from the interest a master has in the labour of his servant, he may maintain an action for enticing or taking him away. 3 *Bacon's Abr. tit. Mas. & Ser.* (O).

And for *taking a man's servant out of his actual service*, an action of trespass will lie; but for *enticing away a man's servant*, trespass will not lie, but only a special action on the case.

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* This case does not appear to be noticed in the last edition of Mr. Justice *Buller's* Nisi Prius.

And it lies, though a servant be not employed for any determinate time, but only by the piece; for in the case of *Hart* v. *Aldridge*, *Ea.* 14 *Geo.* 3, the jury found that two persons were employed as journeymen shoemakers by the plaintiff, but for no determinate time, but only by the piece; and had at the time laid in the declaration each of them a pair of shoes unfinished; that the defendant persuaded them to enter into his service, and to leave these shoes unfinished, which they accordingly did.—It was contended, that the plaintiff could not recover, for the jury having found that there was no hiring for any determinate time, but only by the piece, they could not be the plaintiff's servants; for the term journeyman does not import that they belong to a particular master.—But by lord *Mansfield*, A journeyman is a servant by the day; and it makes no difference whether the work is done by the day or by the piece, he was certainly retained to finish the work he had undertaken, and the defendant knowingly enticed him to leave it unfinished: the gist of the action is, that the defendant has enticed a man who stood in the relation of servant to the plaintiff, and by whom he was to be benefitted. It might perhaps have been different if the men had taken work for every body, and after the plaintiff had employed them, the defendant had applied to them, and they had given the preference to him in point of time; for if a man lived in his own house and took in work for different people, it would be a strong ground to say that he was not the journeyman of any particular master. But the gist of the present action is, that they were attached to this particular master.—*Aston* J. 'It is clear that a master may maintain 'an action against any one for taking and enticing away his ser-'vant, upon the ground of the interest which he has in his ser-'vice and labour;' and even supposing, as that the servant did live in his own house, if he were employed to finish a certain number of shoes for a particular person by a fixed time, and a third person enticed him away, I think an action would lie; if not, it might be of very bad consequence in trade. He is a servant as to this; and though the seducer and enticer is much the worse, yet the law inflicts a penalty upon workmen leaving their work undone.—*Willes* and *Ashhurst* Justices concurred—Postea delivered to the plaintiff. *Cowper's Rep.* 54.

But it seems that a bare enticement to depart, without an actual departure by the servant, is not actionable. *Buller's Nisi Pri. 8vo. ed.* 79.

Neither will an indictment lie for such enticing or taking away, for it is not an injury of such a public nature as to maintain an indictment; but the master's remedy is by an action. 2 *Ld. Raym.* 1117.

And if without any incitement a servant leave his master without licence or just cause, and another, *knowing him to be*

*his servant*, retain him, an action lies*. 2 *Levinz* 63. *Buller's Nisi Pri. 8vo. ed.* 79.

And an action willlie for continuing to employ the servant of another, after notice, though the person so continuing to employ the servant did not procure him to leave his master, or know when he employed him that he was the servant of another. This was decided in *Blake* v. *Lanyon, Ea. Term*, 35 *Geo.* 3. which was as follows:—A servant who was retained by the plaintiff to work by the piece, left the plaintiff's service on a dispute between them, the plaintiff having beaten him: at the time of his departure he had some work in hand: he then applied for work to the defendant, who was also a currier, and who *employed him, not knowing of his engagement with the plaintiff*; but in the course of a few days *afterwards the defendant having been apprised by the plaintiff that this man was his servant, and had left his work unfinished, and being threatened with an action in case he continued to employ him, requested the servant to return to his former master and finish his work: this he refused, and the defendant continued him in his service.*—By the court, an action will lie for receiving, or continuing to employ the servant of another, after notice, without enticing him away: here no fault could be imputed to the defendant for taking this man into his service in the first instance, because then he had no notice of his prior engagement with the plaintiff; *but as soon as he had notice of that fact, he ought to have discharged him.* A person who contracts with another to do certain work for him, is the servant of that other till the work is finished, and no other person can employ such servant to the prejudice of the first master; the very act of giving him employment, is affording him the means of keeping out of his former service. 6 *Term Rep.* 221.

The master hath also such an interest in the labour of his servant, that for the battery of a servant, the master as well as servant may bring an action, and each shall recover damages, for both are injured, the servant in his person, and the master by the loss of his servant's labour; and therefore a recovery in an action brought by one of them, cannot be pleaded in bar to an action brought by the other. 3 *Bacon's Abr. tit. Mas. & Ser.* (O)

But if a man beats another's servant to that degree that he dies thereof, the master loses his action, and must proceed by indictment, for the private injury to him is drowned in the general injury to the public. *Ibid.*

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* See p. 995 supra, as to the testimonials of servants in husbandry under 5 *Eliz.* c. 4. and how far masters are bound to take notice thereof.

So also the master hath an interest in the labour and acquisitions of his servant, and his acts herein are said to be for the benefit of the master; according to the rule *quicquid acquiritur servo, acquiritur domino. Co. Lit.* 117. (a)

### *VII. For what acts of the servant the master shall answer.*

The acts of a servant are in many instances esteemed the acts of the master, by reason of the relationship between a master and a servant; for as in strictness every body ought to transact his own affairs, and it is by the favour and indulgence of the law, that he can delegate the power of acting for him to another, it is highly reasonable that he should answer for such substitute, at least civilly, and that his acts being pursuant to the authority given him, should be deemed acts of the master. 3 *Bacon's Abr. tit. Mas. & Ser.* (K)

Therefore if a servant sell a piece of cloth, and warrant it to be good, an action of deceit lies against the master. *Ibid.*

So if the servant sells wine to another which is corrupted, or is guilty of any like deceit, an action on the case lies against the master, though he did not command the servant to sell it to any particular person. *Ibid.*

So if a man brings a horse to a smith to be shod, and the servant pricks it; or if the servant of a surgeon makes the wound worse, in both these cases an action lies against the master. *Ibid.*

But if a master command his servant to do what is lawful, and he misbehave himself, or do more, the master shall not answer for his servant, but the servant for himself, for it is his own act: otherwise it would be in the power of every servant to subject his master to what actions or penalties he pleased. *Skin.* 228.

Also the acts of a servant are deemed the acts of the master, in dealing and contracting for his master, in those things in which he has a general authority; as if a servant usually buys for the master on credit, and the servant buys some things without the master's orders; yet if the master were trusted by the trader, the master is chargeable though the things never came to the master's use. *Dr. & Stud. Dia.* 2. c. 42. 2 *Vern.* 643. 1 *Ld. Raym.* 224. 3 *Salk.* 234. *Show.* 95. *Brownl.* 64.

But if a man sends his servant with ready money to buy meat or other goods, and the servant buys upon credit, the master is not chargeable. *Show.* 95.

So if the master hath forbid the tradesman to trust his servant, this shall excuse the master on evidence. *Brownl.* 64.

And herein it is said, that a servant, by transacting affairs for his master, does thereby derive a general authority and cre-

dit from him; which general authority is not liable to be determined for a time, by any particular orders or instructions, to which none but the master and servant are privy; for that if this should prevail, there would be an end of all dealing but with the master. *Cas. L. & E.* 110.

The master must also answer for torts and injuries done by his servant, in execution of his authority; thus where a pawnbroker's servant took a pawn, the pawner came and tendered the money to the servant, who said he had lost the goods, upon which the pawner brought trover against the master, and it was held well. 2 *Salk.* 441. 1 *Ld. Raym.* 738.

So where the plaintiff, according to the common course of dealing, delivered to the defendant's servant an ingot of gold to assay; and it not being returned, brought an action against the master—*Pratt*, Ch. J. directed the jury, that the delivery to the servant was sufficient to maintain the action against the master, on proving a subsequent demand and refusal: so the plaintiff had a verdict. 1 *Strange*, 505.

So if goods are delivered to the servant of a carrier, and the goods are lost, an action lies against the master. *Wood's Inst. b.* 1. c. 6.

So where a servant with a cart ran against another cart wherein was a pipe of sack, and overturned the cart and spoiled the sack, it was held that an action lay against the master. 3 *Salk.* 441.

Also where a carter's servant ran his cart over a boy, it was held the boy should have his action against the master, for the damage he sustained by his negligence. 2 *Salk.* 441. 1 *Ld. Raym.* 739.

But a master is not liable in trespass for the *wilful act* of his servant, as by driving his master's carriage against another, done without the direction or assent of the master, but he is liable to answer for any damage arising to another *from the negligence or unskilfulness* of his servant's acting in his employ. *M'Manus* v. *Crickett, Mic. Ter.* 41 *Geo.* 3. 1 *East's Rep.* 106.

And where such an action is brought against the master for consequential damages, occasioned by the neglect of his servant, the servant charged with the neglect cannot be a witness to prove it no neglect—but in an action for so negligently managing his barge, that he ran down the plaintiff's—*Lee* Ch. J. permitted the defendant to produce every one of the men on board his vessel to prove there was no neglect, *he being himself at that time a sleep on board. Buller's Nisi Pri. 8vo. ed.* 77.

And in case against the master for his carman's negligently driving his cart, whereby the plaintiff was flung off a ladder and bruised; *on shewing a release from the master*, the servant was allowed to be examined. *Buller's Nisi Pri. 8vo. ed.* 77.

Also a master is punishable for a nuisance done by his servant; as for instance, if the servant throws dirt in the high-

way, the master is indictable, for he is responsible for all acts done by his servant in the course of, and *proper* for his employment, though he hath no express command of his master, for it shall be intended, that he had authority from his master *. 1 *Ld. Raym.* 264.

For the punishment of servants who negligently fire their master's houses, see *FIRE AND FIRE-WORKS.*
For servants stealing or embezzling their masters' goods, monies, or effects, see *FELONY.*
For the laws relating to servants in particular manufactories, see titles *MANUFACTURES* and *MANUFACTURERS.*
See also titles *SEAMEN* and *TAYLORS.*
And for the duties on servants, see *TAXES.*

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# SESSIONS.

Nature of the sessions of the peace.

THE sessions of the peace is a court of record, holden before two or more justices of the peace, whereof one is of the quorum, at a certain day and place before appointed, in order to inquire, hear, and determine, in pursuance of their commission, of any causes or matters therein contained. 2 *Hawk.* c. 8. s. 48.

And these sessions are petit, general, or quarter sessions. *Comyn's Dig. tit. Jus. of Peace* (D 1).

General quarter sessions.

And such sessions only are properly called *general quarter sessions* which are holden in the four quarters of the year, in pursuance of stat. 2 *Hen.* 5. c. 4. hereafter mentioned. 2 *Hawk.* c. 8. s. 58.

General sessions.

And any other sessions holden at any other time, for the general execution of the authority of justices of peace, which by the said statute, justices of the peace are authorized to hold oftener than at the times therein specified, if need be, may be properly called *general sessions.* *Ibid.*

Petit or special sessions.

And those holden on a special occasion for the execution of

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* It seems also, as a servant is not excused the commission of any crime by the command or coercion of his master, that in this case he may be indicted himself, whether he be authorized by his master or not.

some particular branch of their authority, may be properly called *petit* or *special sessions*. *Ibid.*

And if any thing be done at such private sessions, it ought to be returned to the general or quarter sessions. *Styles*, 360.

Also where authority is given to two justices to do any act, the sessions may do it in all cases, except where an appeal is allowed to the sessions. 1 *Ld. Raym.* 426.

Sessions considered as one day.

And the whole sessions, though it continues for two or more days, is in law considered but *as one day*. *Salkeld*, 607.

At what time held.

By 2 *Hen.* 5. *st.* 1. *c.* 4, the justices of the peace shall make their sessions four times by the year, *viz.* in the first week after the feast of *St. Michael*, in the first week after the *Epiphany*, in the first week after the clause of *Easter*, and in the first week after the translation of *St. Thomas the Martyr* *, and more often if need be.

But in *Middlesex*, the justices of the peace shall keep their sessions two times in the year at least, and more often if need be †. 14 *Hen.* 6. *c.* 4.

The strict regular exposition of the above-said statute of 2 *Hen.* 5. is, that if the feast day fall upon the *Sunday*, the session shall be held in the week following, and not the same week. 2 *Hale's Hist.* 49.

Yet it is very plain, that the quarter sessions are variously held in several counties, some at one day, and some at another; yet it hath been ruled, that these are each of them good quarter sessions within the several acts that relate to quarter sessions; for these acts, especially the 2 *Hen.* 5, are only directory, and in the affirmative; and therefore though the sessions are held on another day, according to the general direction of the 12 *Ric.* 2, yet they are quarter sessions. 2 *Hale's Hist.* 50.

Where sessions may be holden.

And it is agreed that the justices of the peace may arbitrarily and at their own pleasure, hold their quarter sessions *where they think fit within the county*, if they be not restrained by statute. *Jenk. C.* 212, *pl.* 49. *Lambarde*, *b.* 4. *c.* 2.

Also according to *Dalton*, if a place within the county be incorporated, and have justices of its own, yet the same remains still parcel of the county, and the justices of the peace may hold their sessions there, although they may not intermeddle with matters arising there, save only such as happen in their sessions, or with relation thereunto. *Dalton*, *c.* 185, *s.* 3.

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* Called *Becket*, which was on the 7th of *July*. *Cr. Cir. Com.* 30.

† And as a multiplicity of business arises in the county of *Middlesex*, more than in any other, it is customary to hold eight sessions every year, to wit, four general quarter, and four general sessions. *Cr. Cir. Com.* 31.

But he saith, that if the king shall make a place within a county, a county of itself, and give them all privileges of jurisdiction, it will not be safe for the justices of the ancient county to hold there sessions there, unless the king by his letters patent reserve such power. *Ibid.*

Who may act as solicitors in sessions.

By 22 *Geo.* 2. *c.* 46, no person shall act as solicitor, attorney, or agent, or sue out any process at any general or quarter sessions of the peace, without being admitted and inrolled according to law*, on pain to forfeit 50*l.* to him who shall sue within twelve months, with treble costs; and if any attorney or solicitor shall permit any person not admitted and inrolled, to make use of his name in such sessions, he shall forfeit 50*l.* in like manner. *s.* 12.

And no clerk of the peace or his deputy, or any under sheriff or his deputy, shall act as a solicitor, attorney or agent, at any general or quarter sessions of the peace of the county or place where he shall execute his said office, on paid of 50*l.* as aforesaid. *s.* 14.

And the court of *King's Bench* will refer an attorney's bill to the master to be taxed, though the whole business has been carried on at the quarter sessions†. 4 *Term Rep.* 124. 496.

How summoned.

It seems clear from the express words of the commission ‡, that any two such justices, whereof one is of the quorum, may hold a sessions of the peace at such days and places as shall be appointed by them, and that the sheriff is bound to return proper juries, and that the custos rotulorum ought to bring the rolls of the peace before them. 2 *Hawk.* *c.* 8. *s.* 49.

And from hence it seems to follow, that any two such justices may direct their precept under their *teste* to the sheriff for the summons of the sessions of the peace, thereby commanding him to return a grand jury before them, or their fellow justices at a certain day and place, and to give notice to all stewards, constables, and bailiffs of liberties to be present and do their duties at such day and place, and to proclaim in proper places throughout his bailiwick, that such sessions will be holden at such day and place, and to attend there himself to do his duty. 2 *Hawk.* *c.* 8. *s.* 50.

And in order that the sheriff may have sufficient time to proclaim the sessions, to summon and return the several juries, and to warn all officers and others that have business there, to attend at sessions; the precept should bear *teste* (or date) fifteen days before the return, and ought forthwith to be delivered to the sheriff. *Lambarde*, *b.* 4. *c.* 2. 375. 2 *Shaw's Jus.* 174.

And if two such justices make a precept for a session of the

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* See title Attornies.

† See the case ex parte *Williams*, vol. i. p. 262.

‡ See title Justices of peace, ante.

peace, all their fellow justices cannot discharge it by their super-sedeas; but it is said, a supersedeas out of the *Chancery*, directed to the justices or to the sheriff, will discharge it. *Lambarde, b.* 4. *c.* 2. 378. *Crompton*, 107. (*b*)

But it is not sufficient, that the precept run under the name of one justice, though he be the *custos rotulorum*, for he hath no more authority in this behalf, than any one of his fellow justices: the words of the mandamus clause* in the commission being, that the sheriff shall cause a jury to appear at such days and places as the said justices, or such *two or more of them* as aforesaid, shall appoint. *Lambarde, b.* 4. *c.* 2. 377.

Also though the sessions of justices of peace be *commonly and most orderly summoned* by a precept in writing, yet it is said not to be altogether of necessity (for the making of a lawful session) to have it so; for if competent justices of the peace do get men to serve, and thereupon do hold a session without any precept before directed, all presentments made before them by twelve lawful men, shall be of force in law†; but no man shall lose any thing for his default of appearance there, because no man had notice of their sitting. *Lambarde, b.* 4. *c.* 2. 375, 376.

And in the case of the *Q.* v. *the Bailiffs of Ipswich, Hil.* 4 *Ann. Holt*, Ch. J. agreed, that a sessions of the peace might be holden without an appointment by warrant; but he said that the usual way of appointing a sessions was by issuing out a precept to summon it, and that without such a precept, nobody could be compelled to appear. 2 *Ld. Raym.* 1238.

It is also said by *Lambarde* and *Marrow*, that if two or more justices appoint the sessions to be holden in one town, and so many more appoint a sessions in another town on the same day, they may be both so held; and that the proceedings in both places will be good, as they are of equal authority; only that appearance at one is a discharge of service at the other. *Lambarde, b.* 4. *c.* 2. 379. *Comyns' Dig. tit. Jus. P.* (D 3) *Dalton, c.* 185. *s.* 4.

But Mr. *Dalton* is of a different opinion, for he says that it may be well questioned whether they are not both void; as they make two courts of that which ought to be entire and but one: for it doth not appear that the justices are required or enabled to hold more than one sessions at a time; and so their authority being equal, and seeing no preference can be made by the priority of time, or nature of the service, they may be taken to be both void. He adds, however, that the justices by whose forwardness such division happens, or on whom such miscarriage is

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* See ante, p. 120.

† For where a jury may be returned by *a bare award* of the justices of the peace, see ante, p. 83.

chargeable, are punishable for the same by information and fine, or putting out of the commission, as the case shall require. *Dalton*, c. 185. *s.* 4.

And in the case of the *K.* v. *Sainsbury*, *Mic.* 32 *Geo.* 3, it was expressly determined that where two sets of magistrates have a concurrent jurisdiction, and one appoints a meeting for a particular purpose, such as a meeting to grant ale licences, their jurisdiction attaches, so as to exclude the others appointing *a subsequent meeting*, but they *may all meet together on the first day;* and if after such appointment, the other set of magistrates meet on a subsequent day, and grant other licences, their proceeding is illegal, and is therefore the subject matter of an indictment, without the addition of any corrupt motives. 4 *Term Rep.* 451, 457.

Who ought to attend the sessions.

The persons that are bound to give their attendance at the court of sessions, are as follow; *Cr. Cir. Com.* 34. *Dalton*, c. 185. *s.* 7.

1. The *justices of the peace;* for the sessions cannot be holden without a competent number of them, who are to return thither such recognizance to answer, prosecute, and to give evidence, as before such justices, in the intervening time between one sessions and another, have been respectively acknowledged and taken. *Cr. Cir. Com.* 34.

But if a sufficient number of justices do not attend on the day appointed, it cannot be then held, neither can it be adjourned, for where there are not justices enough to hold a sessions, there are not enough to adjourn it legally. But though the holding of the quarter sessions should for this reason fail, yet it doth not follow that it cannot be holden at any time afterwards in that quarter of the year; for as a sessions of the peace may be holden without an appointment by warrant, any two justices (1 *Qu.*) may, upon such failure, meet and form a sessions, even in the same week: at which they may adjourn to another day, and in the mean time issue a fresh precept to the sheriff for the return of the several juries, &c. by which means the original sessions week may be saved, as every adjournment has relation to the first day of the sessions; but should this not be done, yet the business of the county need not stand over for that quarter; for though the statute directs that the sessions shall be holden in the week next after the several feasts therein mentioned, yet the justices have also power to hold the same *more often if need be*, by the express words of the same statute, and two such justices as above may consequently at any other time afterwards, summon a general sessions of the peace for the execution of their authority.

However, if a justice of peace, such as a mayor or like officer, without whom the sessions cannot be held, voluntarily absents himself, it is a misdemeanour, for which the court of *King's Bench* will grant an information. 1 *Strange*, 21.

2. The *custos rotulorum*, by virtue of his place, hath the custody of the rolls of sessions, and ought (by the commission) to attend the sessions by himself, or his deputy, who is the clerk of the peace. *Dalton*, c. 185. s. 7. *Cr. Cir. Com.* 31.

3. The *sheriff* also, by virtue of the commission, by himself or deputy, must attend to return jurors, receive prisoners committed, and the fines imposed by the court. *Ibid.*

4. The *constables of hundreds* ought to be there, and all other officers, to whom any warrant has been directed, in order to make return thereof. *Ibid.*

5. The *gaoler* ought to be there, to give calendars to the justices, clerk of the peace, and other officers of the court, of such persons as are in gaol, and to receive such as may be committed for any contempt or offence. *Ibid.*

6. The *governor* or *keeper of the house of correction*, to give calendars as aforesaid of such rogues and disorderly persons as have been committed to his custody. *Ibid.*

7. All *jurors* returned by the sheriff, by virtue of the precept to him directed. *Ibid.*

8. All *persons bound by recognizance*, to answer, prosecute, and give evidence. *Ibid.*

9. All *bailiffs of hundreds and liberties*, in respect they are bound to give an account of all sessions process. *Ibid.*

10. All *coroners*. *Ibid.*

The jurors not appearing according to their summons, are punishable by loss of issues, which usually make up part of the estreats of the sessions; as also the constables and others by fine to be set on them. *Ibid.*

Persons privileged from arrest during their attendance on the sessions.

And all persons may freely attend at the sessions for the advancement of public justice, and for the service of the king; and to this end, they are as it were invited thither by a certain freedom of access, and by protection from common arrest *, a thing that is incident to every court of record, and without which justice would be greatly hindered; so that if a man come voluntarily to the sessions, either to prefer a bill of indictment, or to give information against another, or to tender a fine upon an indictment touching himself, or do come compelled to make appearance for saving his recognizance, and be arrested in his coming thither, or during his tarrying there, (or on his return, 2 *Strange*, 987.) it seemeth, according to *Lambarde*, that *upon examination of the matter under his oath*, he shall be discharged thereof by the privilege of this court, even as it is used in the higher courts at *Westminster*. *Lambarde*, 402.

* That is, in *civil causes;* for this privilege doth not extend to *criminal matters.*

But to have the privilege of the court, the party must appear in person, that the court may examine him, and be satisfied upon his oath, that he was either prosecuting or defending some suit pending in that court, when he was arrested. *Gilbert's Hist. C. B.* 167.

Also it seems that if a man be arrested by process out of the courts at *Westminster*, the sessions have no power to discharge him, unless he be so arrested in the face of the court.* 2 *Hawk. c.* 1. *s.* 18.

Neither shall a man who attends the court without process or necessity, to do a voluntary act there, be privileged in going and returning; as if a defendant goes to the court to confess an indictment, for there is no process against him. *Salkeld*, 544. *Comyns' Dig. tit. Priv.* (A 1).

But it seems that the privilege of returning hath never been very nicely scanned, so as to require a man to go the direct road: and the protection is not forfeited by the allegation, *that he went out of the way*, because it may be, the party went to buy a horse, victuals, or other necessaries for his journey. Neither is the law so strict in point of time, as to require a person to set out immediately after the trial is over; for where a woman had a trial at *Winchester* assizes, which was over at four in the afternoon, and she staid there till after dinner on *Saturday*; and in the evening at seven, was arrested going home to *Portsmouth*, which is twenty miles: the court held that she ought to be discharged, her protection not being expired, and a little deviation of loitering would not alter it†. 2 *Strange*, 987.

Proceedings at sessions.

At the sessions, offences shall be prosecuted by presentment, information, or indictment. *Comyns' Dig. tit. Jus. Pea.* (D 9).

But if jurisdiction be given to the sessions, to hear and determine, and doth not say by information, this shall be by indictment, and not upon information. *Dalton*, *c.* 191.

Justices' power to bind offenders over to the sessions.

And the justices of the peace may issue their warrants for apprehending persons charged of crimes within the cognizance of the sessions, and bind them over to appear there, although the offender be not yet indicted‡. *Hale's Hist.* 579.

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* In such case the party must apply to the superior court.

† On this point, see 2 *Black. Rep.* 1113. where a party who had attended his cause all day in court, and in the evening retired to dine with his attorney and witnesses in *Palace Yard*, was held privileged from arrest, *causa redeundi*.

‡ But this is not advisable in all cases; for unless there has been an actual breach of the peace, or the party is charged with felony or some misdemeanour inducing a corporal punishment, it seems better to let the matter rest until an indictment is found, and then the party will be

But the sessions have no power to award an attachment for contempt in disobeying their orders, the proper method in such cases being to proceed by indictment for a misdemeanour. 1 *Bott. Const's ed.* 286.

Sessions cannot award an attachment for contempt.

Neither hath the court of sessions authority to amerce any justice of peace for his non-attendance at any such court, as the justices of assize may for the absence of any such justice at the gaol delivery; for it is a general rule, *inter pares non est potestas*, it being reasonable rather to refer the punishment of persons in a judicial office, in relation to their behaviour in such office, to other judges of a superior station, than to those of the same rank with themselves; and therefore it seems to have been holden, that if a justice of peace at the sessions, who is not of the quorum, shall use such expressions towards another, who is of the quorum, for which, if he were a private person, he might be committed or bound to his good behaviour, yet the sessions have no authority to commit him, or to bind him to his good behaviour. 2 *Hawk. c.* 8. *s.* 57.

What authority the sessions hath over its fellow justices.

And yet it seems to be agreed, that if a justice give just cause to any person to demand the surety of the peace against him, he may be compelled by any other justice to find such security, for the public peace requires an immediate remedy in all such cases. 2 *Hawk. c.* 8. *s.* 57.

*The manner of proceeding at the sessions, is as follows:*

First, the justices being met, the usual course is with three *oyez* to proclaim* the sessions, and then read the commission of the peace. *Dalton, c.* 185. *s.* 9.

Then the gentlemen returned by the sheriff for the grand jury are called, sworn, and the charge given to them. *Cr. Cir.* 35.

Grand jury.

And the manner of swearing the grand jury is as follows: *Cr. Cir.* 11.

The grand jury are called in order, every one by his name, and when they appear, they are sworn.

The foreman, by himself, lays his hand on the book, and the clerk administers to him the following oath:

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subject to the ordinary process of the sessions, and duly brought into court to answer. The contrary practice, as a man is thereby deprived of his liberty, may be productive of an unnecessary inconvenience, and on the event of an indictment not being found by the jury, seems to be over severe.

* This proclamation is to the effect following:

*Oyez, Oyez, Oyez, the king's justices do strictly charge and command all manner of persons to keep silence, while the king's commission of the peace for this county of* M *is openly read, upon pain of imprisonment.*

*You, as foreman of this inquest, shall diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge: The king's counsel, your fellows, and your own, you shall keep secret: You shall present no man for envy, hatred, or malice; neither shall you leave any man unpresented for fear, favour, or affection, or hope of reward; but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God.*

The rest of the grand jury, by three at a time, in order, are sworn in the following manner:

*The same oath which your foreman hath taken, on his part, you, and every of you, shall well and truly observe and keep on your part. So help you God.*

When the charge is given, the clerk of the peace shall distinctly read with an audible voice in open court, the king's proclamation against profaneness and immorality, and also all such statutes as are now in force, and required to be read or proclaimed at the general quarter sessions; as 5 *Eliz. c.* 1, against popery; 30 *Car.* 2. *c.* 3, as to burying in woollen; 11 & 12 *Will.* 3. *c.* 15, as to ale measures; 1 *Geo.* 1. *c.* 5, as to riots; and the black act, 9 *Geo.* 1. *c.* 22, which are required to be given in charge at every quarter sessions; and the 4 & 5 *Will. & Mar. c.* 24. 7 & 8 *Will.* 3. *c.* 32. 3 & 4 *Ann. c.* 18. and 3 *Geo.* 2. *c.* 25, concerning jurors, which are to be read in *Midsummer* sessions yearly; and 2 *Geo.* 2. *c.* 24, for preventing bribery and corruption in the election of members of parliament, which is to be read at every *Easter* sessions.

Taking the oaths.

And if any persons attend to take the oaths, in order to qualify themselves for offices, they are to be administered between the hours of nine and twelve in the forenoon, and not otherwise. 25 *Car.* 2. *c.* 2. *s.* 2. 1 *Geo.* 1. *st.* 2. *c.* 13. *s.* 2.

But the oath of allegiance, supremacy, and abjuration, which may be taken by papists, may be administered between the hours of one and two. 31 *Geo.* 3. *c.* 32. *s.* 1.

Calling recognizances.

This being done, the course is to call the recognizances, especially such as are to prosecute and give evidence, that so bills may be drawn and prepared. *Dalton, c.* 185. *s.* 9.

Swearing the parties to give evidence before the grand jury.

The bills being ready, the parties bound over for that purpose are sworn to give evidence upon the bills, and they are sent to the grand jury to give their evidence to them. 2 *Shaw's Jus.* 175.

Business while the grand jury are considering the bills.

While the jury is absent to consider of the bills, the usual way is to hear motions touching settlements, bastardy, nuisances, and like; and to call persons bound over to the peace, or good behaviour; but they are not to be discharged before

the end of the sessions, for fear lest any one come to prefer bills against them, or with other complaint, and they should be gone. *Dalton*, c. 185. *s.* 9. 2 *Shaw's Jus.* 175, 176.

And by 5 *Geo.* 2. *c.* 19, 'upon appeals to the general ses'sions *for any county or precinct within England*, against 'judgments or orders made by justices of peace, such justices 'assembled at any general sessions, shall cause any defects of 'form in such judgments or orders, to be amended without 'costs,' and proceed to hear the merits of such orders, and to make such determinations thereupon, as by law they ought, in case there had not been such defect of form. *s.* 1.

And the sessions upon an appeal, have a right to exercise the same latitude of discretion in judging, as the individual justices had. 1 *Burr. Rep.* 246.

Also the sessions are not obliged to give any reason for their judgment in the orders which they make, no more than any other of the courts of law, for it must be presumed that they acted upon proper grounds. 2 *Salk.* 607. 1 *Burrow's Rep.* 246.

But if they do set out the reason, and that is clearly wrong, the court of *King's Bench* (if it is the *only* reason assigned) may and ought to quash the order, because it manifestly appears to be made by mistake, upon an erroneous foundation. 1 *Burr. Rep.* 246.

Yet the bad reason given must appear to have been the whole and *only* inducement; for if there may have been other grounds, they should be presumed sufficient; and the order ought not to be set aside because some of the reasons, *unnecessarily given*, appear to be bad. 1 *Burrow's Rep.* 246.

And as the sessions is considered in law as one day, the justices may alter their judgments at any time whilst it continues. 2 *Salk.* 606.

But a justice ought not to join in making an order of sessions, in a matter wherein he is himself interested, for where a man is a party, he cannot be a judge indifferent. *Dalton*, c. 173.

Therefore where a justice of peace was surveyor of the highways, and an order was made at the sessions, in a matter which concerned his office, and he joined in making the order, and his name appeared in the caption, it was held bad, and for that reason quashed.* 2 *Salkeld*, 607.

Court equally divided.

In the case of the *K.* v. *the justices of Westmoreland*, *Tr.* 8 *Geo.* 2. upon an appeal to the sessions upon an order of two justices for removing a poor family, the justices were equally divided, so no determination was made, nor the appeal adjourned; a mandamus was therefore directed to all the justices of the county in general, to proceed on the appeal; and it was said,

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* And many orders have been quashed upon the same principle. See p. 134. ante.

that 'the justices ought in this case to have adjourned the appeal, ' or continued it over to a subsequent session :' till by the coming of more justices it might have been determined. 2 *Sessions Cases*, 193.

But doing this, should the justices still continue to be equally divided, as may sometimes happen, the proper course to obtain a final determination of the matter seems to be, for the parties to consent that judgment be pronounced, subject to the opinion of the judges of assize, or court of *King's Bench*, on a special case to be stated for that purpose; this seems to be agreeable to the expedient adopted by the court of King's Bench, in the case of *Thornby* v. *Fleetwood*, *Tr.* 6 *Geo.* 1. where upon a writ of error brought against a judgment in the *Common Pleas*, they were equally divided ; in that case, after several expedients which were judged impracticable, the parties at last consented that the judgment should be affirmed, so that the case thereupon might come before the house of lords for a final determination ; and *Pratt* Ch. J. delivered the opinion of the court thus : the plaintiffs in error move us for an affirmance ; as to that, you see the court is divided, and there can be no rule : but in this case, because the party against whom it is to be affirmed, is desirous and willing it should be so, we are all of opinion, that *upon his consent*, the judgment of the *Common Pleas* may be affirmed ; but lest this be brought in future ages as a precedent of an affirmance upon a division, we direct the officer to *make the rule special* in this case, on recital of the difference in opinion amongst the judges, and the consent of the party. 1 *Strange*, 383.

Whether matters may be referred at sessions.

It was held in the case of the *K.* v. *Harding*, that although a judge of *Nisi prius*, by consent of parties, may make a rule to refer a cause, yet the sessions cannot so do ; though by consent they may refer a thing to another to examine, and make report to them for their determination, but they cannot refer a thing to be determined by the other. 2 *Salkeld*, 477.

But in a modern case on a motion to quash an order of sessions, quashing a poor's rate, on the ground that the rate was by the sessions referred to three justices out of sessions ; and that the sessions afterwards adopted their opinion, without exercising their own judgment—Lord *Mansfield* said, if they did this of their own accord, without the consent of the parties, it could not be supported : they are not warranted to delegate their authority; but if they acted with the consent of the parties, they have done very right ; and we will never suffer the party who consented to the reference, to come here to set it aside : and I think it sufficient if the attornies consented, and attended at the reference. The court directed it to be sent back to the sessions, to certify whether it was referred by consent. *K.* v. *Jus. of Northampton*, *Caldecot's Cas.* 30.

Trial of traverses.

After the dispatch of these interlocutory matters, and the ar-

raignment and trial of prisoners, of which we shall particularly speak hereafter, the persons bound by recognizance at the last sessions may be called to prosecute their traverses at the present sessions ; for if a person indicted of a trespass or other misdemeanour, do appear, and shall plead not guilty, and traverse the indictment, he shall enter into recognizance to prosecute his traverse at the next quarter sessions ; for it seems to be agreed, that the justices of the peace may not enquire, try, and determine civil offences, in one and the same day ; because the party ought to have a convenient time to provide for the trial. *Cro. Car.* 448.

And the practice in this respect is as follows :

First, The party indicted comes into court in his proper person, and brings with him two sufficient house-keepers for his pledges ; and his solicitor makes a note of the names and additions of such pledges, which he delivers to the clerk in court, who is to take the recognizance. *Cr. Cir.* 41.

Then the clerk reads the indictment to the party indicted, and says, *Are you guilty or not guilty ?* and the person indicted says, *Not guilty*, which is the manner of pleading the general issue. *Ibid.*

Then the clerk calls the party indicted by his name, and takes the recognizance thus :

'*A B*, you acknowledge to owe to our sovereign lord the 'king the sum of forty pounds. *C D* and *E H* (the pledges), 'you and each of you acknowledge to owe to our sovereign 'lord the king the sum of twenty pounds, to be levied upon 'your several goods and chattels, lands and tenements, by way 'of recognizance to his majesty's use, upon condition, that if 'you *A B* shall be and appear at the next session of the peace 'to be holden for this county, to try your traverse upon the 'indictment, to which you have now pleaded not guilty, and 'not to depart the court without leave: are you content?'

Then the person who hath pleaded, and his pledges, severally make answer *yes*, or, *we are contented ;* and then depart the court for that time. Two or three days before a traverse for a misdemeanour is intended to be tried, the solicitor for the defendant draws a notice thereof, and serves the prosecutor with a true copy. *Ibid.*

The forms of which notice * is thus :

The king against O O, at the prosecution of P P.

P P,

'Take notice, that I intend to appear at the next general '(or general quarter) session of the peace, to be holden by adjournment, at the *Guildhall* in ———— in and for the

* This notice need not be served personally, it may be left with any person at the usual or last place of the prosecutor's abode. *Cr. Cir.* 42.

'county of *M*, on *Wednesday* next, being the ——— day 'of——— by eight o'clock in the forenoon of the same day, 'and then and there try my traverse upon the indictment 'which you have preferred against me for assaulting you.— 'Dated the —— day of ——— O O.

To *P P* of————

On the day of trial, the defendant must appear in court, at the bar, in his proper person, and the solicitor prepares an affidavit of the service of the notice, in case the prosecutor does not appear. *Cr. Cir.* 42.

When the defendant is at the bar, a clerk in court reads the indictment to the jury, and then says: 'to which indictment the defendant hath pleaded not guilty: your business, 'gentlemen, is to enquire whether he be guilty or not guilty, and 'hearken to your evidence;' then the crier makes proclamation: 'O yes, if any one can inform the king's justices, the 'king's attorney, the king's serjeant, or this inquest now to be 'taken, let them come forth and they shall be heard, for the 'defendant stands at the bar upon his discharge.' *Ibid.*

Then the prosecutor, and all the witnesses * that appear to be indorsed on the indictment, are called to give evidence, and are heard; and if the defendant is found guilty, the court sets a fine upon him adequate to the offence, or other punishment as the law directs. *Cr. Cir.* 42, 43.

If a prosecutor does not appear against the defendant, according to the notice, the defendant is acquitted, the prosecutor being (by the crier) called three several times to come and give evidence; then the chairman says to the jury to this effect: 'Gentlemen, *A B* stands indicted for making an assault upon '*B C*, the prosecutor does not appear to give evidence, there'fore without you know of your own knowledge that the de'fendant is guilty, you must acquit him;' and thereupon the jury being asked (by the clerk of the peace) 'whether the de'fendant is guilty or not guilty,' *they say*, 'not guilty.' *Cr. Cir.* 43.

In case of trespass and assault, the court frequently recommends the defendants to talk with the prosecutor (that is, to make him amends for the injury done him); and if the prosecutor comes and acknowledges a satisfaction received, the court will set a small fine on the defendant, as three shillings and fourpence, or twelve-pence. *Cr. Cir.* 43.

But Sir *William Blackstone* very strongly reprobates this practice of permitting the defendant to *speak with the prosecutor*, as it is termed; for, he observes, that it is a dangerous practice; and that though it may be entrusted to the prudence and discre-

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* The clerk of the peace makes out the writ of subpœna for witnesses, and for this, in *Middlesex*, he takes a fee of 2*s.* 6*d.* *Cr. Cir.* 42.

tion of the judges in the superior courts of record, *it ought never to be allowed in local or inferior jurisdictions, such as the quarter sessions,* where prosecutions for assaults are by this means too frequently commenced, rather for private lucre, than for the great end of public justice. *Above all, it should never be suffered where the testimony of the prosecutor himself is necessary to convict the defendant*; for by this means the rules of evidence are entirely subverted, the prosecutor becomes in effect a plaintiff, and yet is suffered to bear witness for himself, nay even a voluntary forgiveness by the party injured ought not in true policy to intercept the stroke of justice. 4 *Black. Com.* 363, 364.

Sometimes the prosecutor and defendant agree before the defendant pleads to the indictment, and then the defendant comes into court in his proper person, and pleads guilty to the indictment; and upon proving (by a subscribing witness) or an affidavit made and filed, a general release executed by the prosecutor, the defendant submits to a small fine (to wit) such as the court is pleased to impose; or if the defendant hath pleaded to the indictment not guilty, and afterwards obtains a general release from the prosecutor, the defendant may come into court, and upon relinquishing his former plea, and pleading guilty, and proving the release as above, on motion, the court will set a small fine. *Cr. Cir.* 43, 44.

There are also frequent prosecutions at sessions for trifling assaults, in which cases, it is adviseable for a defendant not to put himself to the expence of trying the indictment, but to give notice to the prosecutor, that he intends to plead guilty to such indictment; in which case the prosecutor attends the court with his witnesses, and gives evidence of the nature of the offence; and then the court proceeds to fine the defendant for his misbehaviour towards the prosecutor: but before that is done, the court will admit the defendant to call such witnesses as he desires, and will examine them by way of mitigation. And if the prosecutor does not appear, pursuant to the said notice, then upon making an affidavit of the service of the said notice, the court will set a small fine on the defendant, and discharge him. *Cr. Cir.* 45.

If the defendant should have an action brought against him for the same offence of which he stands indicted (which he cannot well judge before the plaintiff declares), the defendant may apply to his majesty's attorney-general for a *noli prosequi* to be entered on the indictment. For this purpose, he must first obtain a certificate from the clerk of the peace, of the whole substance of the indictment, and the time when it was preferred; to which certificate must be annexed an affidavit, purporting that 'such a one did see the clerk of the peace of the county 'of *M*, sign the certificate thereto annexed on such a time, and 'that since, or before the time (*as the case is*) of preferring the

'indictment, this deponent was served with a copy of a '——— issuing out of his majesty's court of——— at the suit ' of *A B* the prosecutor of the said indictment, returnable, &c. 'and that at such a time this deponent did receive a notice of a 'declaration being filed against him, at the suit of the said *A B* ' the prosecutor of the said indictment, in the —— office in the ' *Temple*, for assaulting him the said *A B*, which said declara- 'tion and indictment, this deponent saith, is for one and the same ' assault, and not for two different offences of that sort;' whereupon the attorney-general will grant a summons, directed to the prosecutor, to attend him on such a day, to shew cause why a *noli prosequi* should not be entered on such indictment; and if the prosecutor does attend pursuant to that summons, he must make his election whether he will proceed on the indictment, or on the action; and if he does not attend the first summons, a second and third issues; and if he does not attend either of them, upon making affidavit of the service of the several summonses on the prosecutor, or leaving them at the last place of his abode, the attorney-general will sign a warrant under his hand and seal, directed to the clerk of the peace of the county, for entering a *cessat processus* on the indictment. *Cr. Cir.* 45,46.

Trials for petit larceny and other offences.

The business of the arraignment and trial of prisoners at the sessions is conducted as follows:

Receiving bills found from the grand jury.

When the grand jury have agreed upon any bills, they bring the same into court: and the clerk of the peace calls every jury-man by his name, who severally answer, to signify they are present; and the foreman of the jury hands the indictments to the clerk of the peace, who thereupon says to the jury, thus: 'Gentlemen, you agree the court shall amend matter of form, 'altering no matter of substance?' The jury signifying their consent, the clerk of the peace reads the names of the offenders, and offences, of every indictment, whether the bills are found to be true or not (as indorsed by the jury); and on those bills not found, the clerk of the peace makes a cross. *Cr. Cir.* 35.

Arraignment.

Thus towards the end of the sessions it appearing what bills are come in against the prisoners, the gaoler being called to set his prisoners to the bar, and the crier being called to make a bar, that is, to dispose of the company, that a way may be made open from the court to the prisoners, that the court, jury, and prisoners may see each other, one of the prisoners is called to:—A B, *hold up your hand. Dalton, c.* 185.

Holding up the hand.

Though this holding up of the hand may seem a trifling circumstance, yet it is of this importance, that thereby he appears to be the person indicted, and owns himself to be of that name. 2 *Hale's Hist.* 219.

However, the ceremony of holding up the hand is not required in the case of a peer, nor is it of absolute necessity in the case of a common person. 2 *Hale's Hist.* 219.

For being calculated merely for the purpose of identifying the person, any other acknowledgment will answer the purpose as well; therefore if the prisoner obstinately and contemptuously refuses to hold up his hand, but confesses he is the person named, it is fully sufficient. 4 *Black. Com.* 323.

Then he is acquainted with the effect of the charge laid against him: *You* A B *stand indicted, by the name of* A B, *for that you, &c.* so read the indictment through, and then ask the prisoner, *How say you,* A B, *are you guilty or not guilty?* *Dalton*, c. 185. *Cr. Cir.* 12. Pleading.

If he answer that he is guilty, then the confession is recorded, and no more done till judgment. *Dalton, c.* 185. Confession.

If he make no answer at all, and will not plead, he shall have the same judgment as if he had confessed the indictment *. 12 *Geo.* 3. *c.* 20. Standing mute.

But if he says *not guilty*, he is then asked, *how will you be tried?* *Cr. Cir.* 12. Trial by the country.

The common answer is, *By God and the country*: then the clerk says, *God send you a good deliverance*; and writes over the prisoner's name on the indictment, *po. se*; that is, *ponit se*, puts himself upon God and the country. *Cr. Cir.* 12. 2 *Hale's Hist.* 219.

But if the prisoner hath any matter to plead, either in abatement or in bar of the indictment, as misnomer, a former acquittal, former conviction, a pardon, or the like, then he pleads it without immediate answering to the felony. 2 *Hale's Hist.* 219.

And it is observed by *Hawkins*, that every person at the time of his arraignment, ought to be used with all the humanity and gentleness which is consistent with the nature of the thing, and under no other terror or uneasiness than what proceeds from a sense of his guilt, and the misfortune of his present circumstances; and that therefore he ought not to be brought to the bar in a contumelious manner; as with his hands tied together, or any other marks of ignominy and reproach; nor even with fetters on his feet, unless there be some danger of a rescous or escape. 2 *Hawk. c.* 28. *s.* 1.

It is therefore for fear of an escape, that prisoners now usually come with their shackles upon their legs, but they stand at the bar unbound till they receive judgment. 2 *Hale's Hist.* 219.

The court ought also to exhort the prisoner to answer without fear, and to acquaint him that he shall have justice done to him. 2 *Inst.* 316.

Although it is in many places used, to try a man for felony the same sessions in which the indictment is found, yet it seems Postponing trials.

* For this, see title MUTE, ante.

highly reasonable, if the prisoner desire it to be deferred, and shew probable cause, to defer it; for that, 1st. The sessions are holden oftener than the assizes. 2dly. The speedy trials seem to be in favor of the prisoner, and *volenti non fit injuria.* 3dly, If a traverse upon an indictment of nuisance, be not triable the same sessions that it is joined, but a man shall have time to provide for it, much more in matter of life, when usually the party is in prison, and may well be supposed less able to provide for it, and in the nature of it requires greater consideration. *Dalton*, c. 185. s. 13.

Witnesses called.

Next, the prisoner having put himself upon his country, the prosecutors are called on their recognizance to give evidence, *Dalton*, c. 185. s. 10.

Jury called.

When a sufficient number of prisoners are arraigned to be tried by a petit jury, then the clerk calls the jury on their panel thus: 'You good men that are returned and impanelled to 'try the issue joined between our sovereign lord the king and 'the prisoners at the bar, answer to your names, upon pain and 'peril that shall fall thereon.' *Cr. Cir.* 12, 13. *Dalton*, c. 185.

Challenge.

When the jurors have appeared, then the clerk calls the prisoners to the bar, that are to be tried by the jury, and says unto them thus: 'These good men that were last called, and 'have appeared, are those that shall pass between our sovereign 'lord the king and you (upon your several lives and deaths, if 'it is a capital offence): if therefore you, or any of you, will 'challenge them, or any of them, your time is to speak as they 'come to the book to be sworn, before they are sworn, and you 'shall be heard.' *Cr. Cir.* 13. *Dalton*, c. 185.

Proclamation.

Then the crier makes proclamation, and says: 'If any man 'can inform the king's justices, the king's attorney, or this 'inquest to be taken between our sovereign lord the king and 'the prisoners at the bar, of any treason, murder, felony, or 'other misdemeanour, committed or done by them, or any of 'them, let them come forth, and they shall be heard; the 'prisoners stand at the bar upon their deliverance.' *Cr. Cir.* 13. *Dalton*, c. 185.

Swearing the jury.

Then the clerk calls the jury to be sworn, every man severally, and this is done in the following manner, calling the first juror: *Cr. Cir.* 13.

'You shall well and truly try, and true deliverance make, 'between our sovereign lord the king and the prisoners at the 'bar, whom you shall have in charge, and a true verdict give ac'cording to your evidence; so help you God.'

Then call the second juror, and so swear him in like manner, and so on to twelve, and neither more nor less. 2 *Hale's Hist.* 293.

The crier then counts the jurors, as the clerk reads their names, and asks them if they are all sworn. *Cr. Cir.* 13.

Then the clerk calls the prisoner named in the first indictment, to the bar, and bids him hold up his hand, and then says to the jury: 2 *Hale's Hist.* 293, 294. *Dalton*, c. 185. *Cr. Cir.* 14. Charging jury.

'Look upon the prisoner, you that are sworn, and hearken 'to his cause.'

'*A B* stands indicted by the name of *A B*, &c. (*reading the 'whole indictment as he did upon the arraignment*) *and then 'says*: Upon this indictment he hath been arraigned; upon 'his arraignment he hath pleaded not guilty: and for his trial 'hath put himself upon God and the country, which country 'you are; so that your charge is to inquire, whether he be 'guilty of this felony, whereof he stands indicted, or not 'guilty; if you find him guilty, you shall inquire what lands, 'tenements, goods, and chattels he had at the time of the fe'lony committed, or at any time since: if you find him not 'guilty, then you shall inquire if he did fly for it or not; if 'you find he did fly for it, then you shall inquire what goods 'and chattels he had, at the time when he did fly for it, or 'at any time since; if you find him not guilty, and that he 'did not fly for it; say so, and no more, and hear your evi'dence.'

For if a person *accused* of felony or petit larceny escapes, *even before* arrest, if the inquest or jury find that he fled for the same, he shall forfeit his goods and chattels, whether he be found guilty or acquitted; for the very flight is an offence, carrying with it a strong presumption of guilt, and is at least an endeavour to elude and stifle the course of justice prescribed by law:—but the jury very seldom find the flight, forfeiture being looked upon, since the vast increase of personal property of late years, as too large a penalty for an offence to which a man is prompted by the natural love of liberty. *Hale's Pl.* 111. 2 *Hawk.* c. 49. s. 14. 4 *Black. Com.* 387.

Then the court proceeds to examine the witnesses, upon oath, as well for the king as for the prisoner. *Cr. Cir.* 14. Swearing witnesses.

And the oath is administered in the following manner:

*The evidence that you shall give between our sovereign lord the king and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth*: So help you God.

But it is a settled rule at common law, that no counsel shall be allowed a prisoner, whether he be a peer or commoner, upon the general issue, on an indictment of treason or felony, unless some point of law arise, proper to be debated. 2 *Hawk.* c. 39. s. 1. How far prisoners are allowed to have counsel.

For the court is to be of counsel with the prisoner, and will advise him for his good, and not take advantages too strictly against him. *Dalton*, *c.* 185. *s.* 11.

Also the court will receive information from any by-stander, especially a man of law, who may offer any thing as *amicus curiæ*, relating to the trial or manner of it. *Dalton*, *c.* 185. *s.* 11.

However of late years the judges have seldom refused to allow the prisoner counsel to stand by him at the bar, and instruct him what questions to ask, or even to ask questions for him, in matters of fact. 4 *Black. Com.* 356.

And in offences under felony, a defendant may be heard by his counsel. *Wood*, *b.* 4. *c.* 5.

The proceedings against the rest of the prisoners are the same, with this difference only, *viz.*

Charging the jury with another prisoner.

The clerk, after having read over the next indictment, says: 'Upon this indictment he hath been arraigned. Upon this arraignment he hath pleaded *not guilty*; and for his trial hath 'put himself upon God and his country, which country you 'are; so that your charge is to inquire, whether he be guilty 'of this felony whereof he stands indicted, or not guilty? And 'farther to inquire of him, as you had in charge to inquire of 'the former prisoner, and hear your evidence.'—Then the witnesses are called, sworn, and examined as before. *Cr. Cir.* 14.

Evidence summed up.

When the prisoner hath done, and hath been heard all that he has to say in his defence, the evidence is summed up by the court to the jury; and if they cannot agree in their verdict at the bar, a bailiff must be sworn to keep the jury thus:—*You shall swear that you shall keep this jury without meat, drink, fire, or candle; you shall suffer none to speak to them, neither shall you speak to them yourself, but only to ask them whether they are agreed*: So help you God. *Dalton*, *c.* 185.

Verdict.

When the jury are agreed on the verdict, the clerk calls them by their names, and asks them, 'if they are agreed on 'their verdict, and who shall say for them?' and calls the first prisoner to the bar, and bids him *hold up his hand*. Then says to the jury, 'Look upon the prisoner, you that are sworn, 'what say you, is *A B* guilty of the felony whereof he stands 'indicted, or not guilty?' *If they say* guilty, *then the clerk asks them*, 'what lands or tenements, goods or chattels, he, '*the prisoner*, had at the time of the felony committed, or at 'any time since?' *The jury's common answer is*, 'None to 'our knowledge.' *When the jury say* not guilty, *then the clerk asks* if he, *the prisoner*, 'did fly for it or not?' *If they find a flight, it is recorded; but their common answer is*, 'Not 'to our knowledge.' *Cr. Cir.* 15.

Recording verdict.

And so the clerk proceeds to every prisoner particularly which the jury hath in charge, writing after the words *po. se*

over the several names of the prisoners, *guilty* or *not guilty*, as the verdict is; and then says to the jury, *Hearken to your verdict as the court recordeth it; you say* A B *is guilty of the felony whereof he stands indicted, and that he hath no goods nor chattels; that* C D *is not guilty, and so of the rest;* and then concludes, *and so you say all. Cr. Cir.* 15.

Judgment.

Then make a proclamation with three *oyez*, and say '*all manner of persons are commanded to keep silence whilst judgment is given against the prisoner at the bar, upon pain of imprisonment*;' then set the prisoner to the bar, and give the sentence. *Dalton*, c. 185.

If a mandamus issue directed to the justices at sessions, requiring them to give judgment on an indictment, and they return thereto, that they have given a certain judgment thereon; the court will not quash the return because it states an erroneous judgment; for it can only be reversed by a writ of error brought for that purpose. *K.* v. *Justices of the W. R. of Yorkshire, Hil.* 38 *Geo.* 3. 7 *Ter. Rep.* 467.

Discharge on proclamation.

Towards the close of the sessions, that is to say, after the grand jury is discharged, such persons in gaol that are not indicted, and such as are, but the bills not found to be true, are delivered by proclamation; and such persons that are bound to appear to answer, and no prosecution exhibited against them, are discharged of their recognizances. *Cr. Cir.* 15. 46.

And the practice is to call the parties bound to answer as they stand entered in the clerk of the peace's book, and if there be no indictment against them, then to discharge them upon answering to their names and paying their fees. *Cr. Cir.* 46.

Fees in session

It is said that the fees in sessions for traversing, trying, or discharging indictments, discharging recognizances of the peace and good behaviour, and the like, do vary according to the custom of the country; and that in that case the custom of the place is to be observed. *Dalton*, c. 41.

But in the book on the *office of the* clerk of the peace, referred to under the title CLERK OF THE PEACE, a table of those fees is set forth *: besides which, the fees payable to clerks of the peace are in many instances limited by statute, as may be seen under the different titles in this work.

It seems that the court have no power to commit for non-payment of the fees; for if there is right, there is remedy; and *indebitatus assumpsit* will lie, if the fee is certain; if uncertain, *quantum meruit.* 1 *Lord Raym.* 703.

Prisoners discharged may be conveyed by pass.

By 32 *Geo.* 3. *c.* 45. any judge of assize, or justices in sessions, or justices of the peace, may order, whenever he or they think proper, any convict upon his discharge from prison, to be conveyed by pass, under hand and seal, according to the vagrant act. *s.* 4.

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* Which see at the end of the title CLERK OF THE PEACE.

And the judge, justices or justice aforesaid, may also convey by pass, any person who shall be acquitted at the assizes or sessions, or discharged by proclamation or otherwise, '*who shall of himself, or by any other in his behalf* apply to the court or to any justice of the peace, to be conveyed as aforesaid. *Ibid.*

And the judge, justices or justice, shall certify in the pass, that the person conveyed was discharged from prison, or a person acquitted or otherwise discharged; and no fee whatever shall be paid for such pass. *Ibid.*

Adjournment of sessions.

Where the sessions is adjourned, the stile of the sessions ought not to run *at such a sessions* '*held by adjournment*,' but the original meeting of the sessions ought to be set forth, and that it was *continued from thence* to such further time by adjournment. 2 *Strange*, 832. 865.

But such adjournment must not be beyond the time of the meeting of the next quarter sessions; for the justices cannot continue one general sessions to a day subsequent to the time appointed by the statute for the holding another original sessions. 19 *Viner's Abr.* 358.

Justices fees for sitting in sessions.

The justices shall take for their wages 4*s.* the day for the time of their sessions, and their clerk 2*s.* of the fines and amerciaments, rising and coming of the same sessions, by the hands of the sheriffs, and the lords of franchises shall be contributary to the said wages, after the rate of their part of the fines and amerciaments. 12 *Ric.* 2. *c.* 10.

And the estreats of the justices shall be doubled, and the one part delivered by them to the sheriff, to levy the money thereon arising, and thereof to pay the justices their wages by the hand of the sheriff, by indenture betwixt them thereof to be made. 14 *Ric.* 2. *c.* 11.

But no duke, earl, baron, or banneret, shall take any wages. *Ibid.*

For the indemnity of justices of peace in regard to their acts, either individually or in sessions, see div. vii. of the title *JUSTICES OF PEACE.*

For the process of the court of sessions, see titles *OUTLAWRY* and *PROCESS.*

Form of a precept to summon the sessions.

Monmouthshire. } *We* A B *and* C D, *esquires, two of the justices of our sovereign lord the king, assigned to keep the peace in the county of* ——— *aforesaid, and also to hear and determine diverse felonies, trespasses, and other misdemeanors committed in the same county, one of us being*

*of the quorum, to the sheriff of the same county, greeting: On the behalf of our said sovereign lord the king, we command you that you omit not, by reason of any liberty within your county*, but that you enter therein, and that you cause to come before us, or some others justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, on ——— the —— day of ——— now next ensuing, at the hour of ——— in the forenoon of the same day, at ——— in the said county, twenty-four good and lawful men of the body of the county aforesaid, then and there to inquire, present, do, and perform, all and singular such things which on the behalf of our said sovereign lord the king shall be enjoined to them; also that you make known to all coroners, keepers of gaols and houses of correction, high constables and bailiffs of liberties within the county aforesaid, that they be then there, to do and fulfill the things which, by reason of their offices shall be to be done. Moreover, that you cause to be proclaimed through the said county in proper places, the aforesaid sessions of the peace, to be held at the day and place aforesaid, and do you be then there, to do and execute those things which belong to your office. And have you then there as well the names of the jurors, coroners, keepers of gaols and of houses of correction, high constables and bailiffs aforesaid, as also this precept. Given under our hands and seals at ——— in the county aforesaid, the ——— day of ——— in the ——— year of the reign of ———*

When the sheriff has received this precept, he must direct several warrants to the several bailiffs of liberties, and bailiffs of hundreds, containing in them the whole substance of this precept. 2 *Shaw's Justice*, 175.

And the usual form of the sheriff's precept thereon is as follows:

Monmouthshire, { A B esq. *sheriff of the county aforesaid, to* C D, *bailiff of the hundred of ——— in the said county greeting: By virtue of a precept under the hands and seals of* E F *and* G H, *esquires, two of his majesty's justices assigned to keep the peace in my said county; and also*

* If there is a franchise in the county possessing an exclusive jurisdiction, such as the city of *Westminster* in the county of *Middlesex*, it will be proper to add in this place (*except the liberty of* ———). See *Cr. Cir. Com.* 29.

*to hear and determine divers felonies, trespasses, and other misdemeanors committed in my said county, one of them being of the quorum, to me directed. These are in his majesty's name to will and require you, That you forthwith make known by open proclamation in every market town, and all other places convenient within the hundred of ——— aforesaid, that the next general and quarter sessions of the peace, of and for the county aforesaid, is to be holden and kept at the* Guildhall *in the town of ——— in the county aforesaid, on* Wednesday *the ——— day of ——— now next ensuing, at the hour of nine of the clock in the forenoon of the same day; and that you give notice to all justices of the peace, coroners, keepers of goals, and houses of correction, and high constables of the said hundred, that they be then and there present, to do and perform that which to their several offices doth appertain: And that all those that ought to prosecute any prisoner or prisoners in the gaol of the said county, or who are bound over then to appear and answer, be then and there present, to prosecute against them according to law: And also that you summon and warn the persons whose names are underwritten, that they be then and there present to serve on the grand jury, and to inquire on his majesty's behalf, for the body of the county aforesaid, for all such matters and things as shall be then and there given them in charge: and also that you summon and warn the persons underwritten, being able and sufficient freeholders of the said hundred, that they be then and there present to serve on the petty jury for his majesty's service: And that yourself be then and there present to make return hereof. And herein neither you nor them may fail, at your and their perils. Given under the seal of my office the ——— day of ——— in the ——— year of the reign of our sovereign lord* George the Third, *by the grace of God of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, &c. and in the year of our Lord ———*

Then the sheriff makes his return of the summons to the sessions, in this manner:

*The execution of this writ appears in certain schedules to this writ annexed.*

A B, Sheriff.

To this are annexed divers panels fairly ingrossed on parchment, containing the names of the jurors, &c. 2 *Shaw's Jus.* 175.

The style of the sessions is as follows:

Monmouthshire, to wit. } *THE general quarter-sessions of the peace, holden at the* Guildhall *in the town*

*of ——— in and for the said county, on the ——— day of ——— in the ——— year of the reign of our sovereign lord* George *the Third, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, and so forth, before ——— and ——— esquires, and others, justices of our said sovereign lord the king, assigned to keep the peace in the said county; and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the* quorum, *and so forth.*

*For the form of a SUBPOENA for witnesses to appear and give evidence at the sessions, see div. iii. of the general title EVIDENCE in vol. ii.*

*For the form of a BENCH WARRANT on an indictment found at sessions, see title PROCESS in vol. iii.*

*And for the forms of the Sessions Process of VENIRE and DISTRINGAS, CAPIAS and EXIGENT, see titles PROCESS and OUTLAWRY, in vol. iii.*

END OF VOL. III.

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